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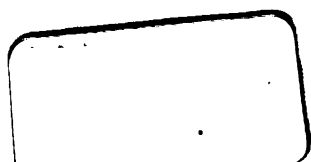
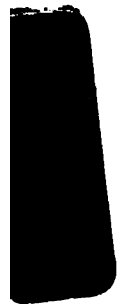
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THE RIGHT HON. THE EARL OF SELBORNE.
LORD HIGH CHANCELLOR.

THE HISTORY
AND
ORIGIN OF THE LAW REPORTS,

TOGETHER WITH

A COMPILATION OF VARIOUS DOCUMENTS SHEWING THE PROGRESS
AND RESULT OF PROCEEDINGS TAKEN FOR
THEIR ESTABLISHMENT.

AND THE CONDITION OF THE REPORTS ON THE
31st DECEMBER, 1883.

BY

W. T. S. DANIEL, Q.C.,
LATE JUDGE OF COUNTY COURTS, AND FORMERLY VICE-CHAIRMAN OF THE
COUNCIL OF LAW REPORTING.

LONDON
WILLIAM CLOWES AND SONS, LIMITED,
27, FLEET STREET.
1884.

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TO
THE RIGHT HONOURABLE
THE EARL OF SELBORNE,
THE LORD CHANCELLOR,

IN ACKNOWLEDGMENT OF THE KINDLY AND EFFICIENT
SERVICES RENDERED BY HIM, AS

Attorney-General,

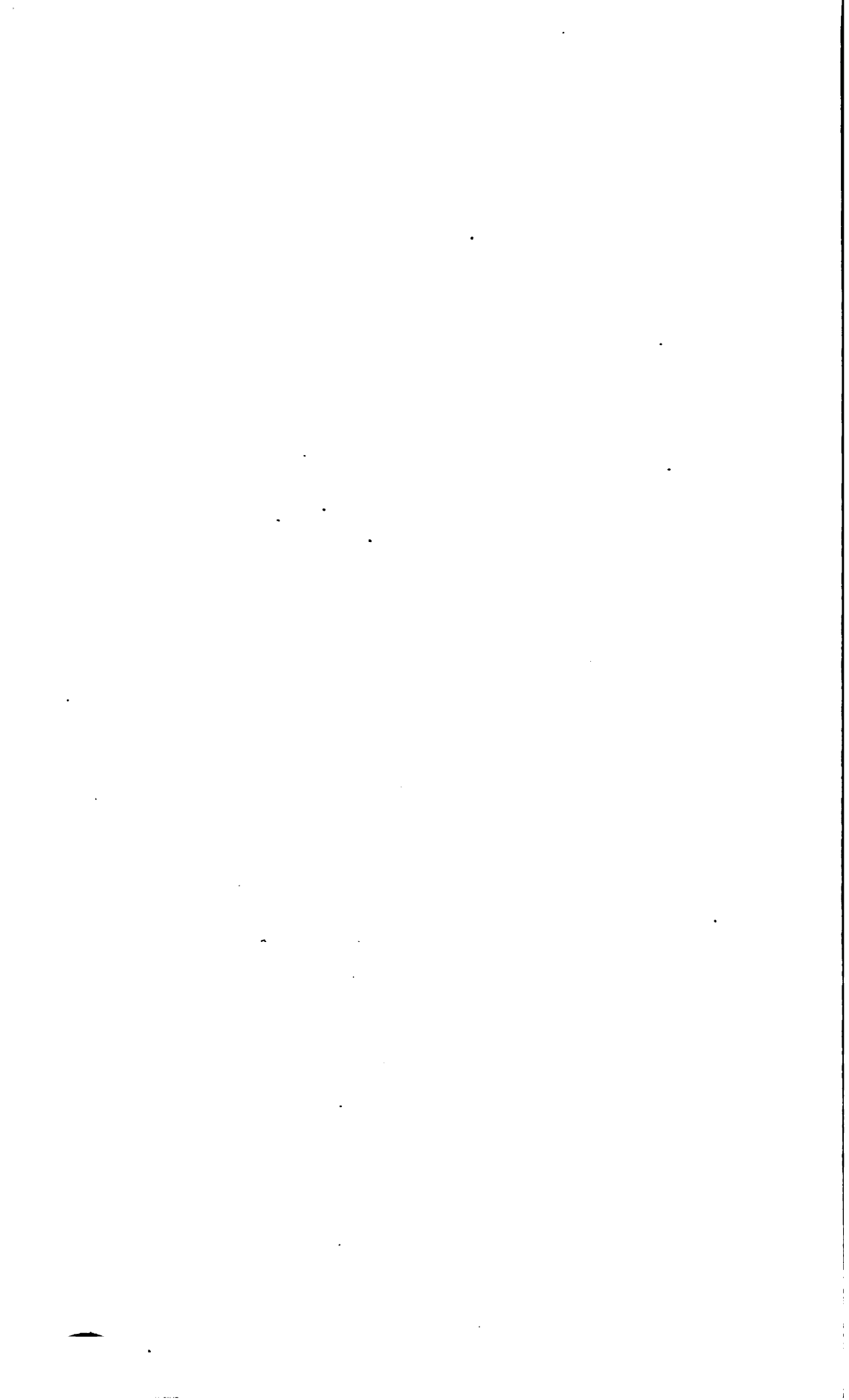
IN FURTHERING THE EFFORTS OF THE BAR TO AMEND THE SYSTEM OF
LAW REPORTING; AND ALSO OF VARIOUS
ACTS OF COURTESY TOWARDS MYSELF IN CONNEXION
WITH THE SAME EFFORTS,

This Work

IS, WITH HIS LORDSHIP'S CONSENT,

Respectfully Dedicated by

THE AUTHOR AND COMPILER.



P R E F I X.

I desire to offer my thanks to the Incorporated Council of Law Reporting, and particularly to the Chairman, Joseph Brown, Esq., Q.C., for the kindness and liberality shewn to me in allowing their Secretary, James Thomas Hopwood, Esq., to render me assistance in the compilation of this work : and especially are my thanks due to Mr. Hopwood for the valuable services he has willingly rendered me in allowing me access to various books and papers not in my possession, and the labour he has bestowed in making copies and extracts for me from the muniments of the Council. I beg also to acknowledge the assistance I have received from Mr. Doyle, the Steward of Lincoln's Inn, in giving me information and making for me copies of entries in the books of the Inn relating to the appointment of Members of the Bench as representatives of the Council of Law Reporting, of which I have made full use.

W. T. S. DANIEL.

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HISTORY OF "THE LAW REPORTS."

PRELIMINARY STATEMENT

Explanatory of the object and character of the publication, as a history of the origin of "The Law Reports."

"THE LAW REPORTS" commenced on the 1st day of Michaelmas Term (2nd November), 1865.

The first step taken with a view to their establishment was taken by me in distributing for private circulation among the members of the Bar a printed paper dated the 18th of May, 1863.

The interval between the distribution of that paper and the commencement of the "Reports" embraced a period of about two-and-a-half years. And that period was occupied with a series of representative proceedings on the part of the Bar which, *per varios casus, per tot discrimina rerum*, resulted in the establishment of "The Law Reports."

At the commencement of the Long Vacation in the present year (1884) these "Reports" had been in existence, and in continuous circulation, for nineteen years. And from their first establishment, and continuously throughout the whole period of their existence, they have proved an undoubted financial success. And that success could not have been achieved unless they had also succeeded in at once acquiring, and continuing thenceforth to maintain, the confidence of those for whose use they were established.

Looking back through this vista of years I hope I may be allowed to join with others (fellow labourers with me) in contemplating with justifiable satisfaction the uniform and hitherto continuous success of the object of our common labours: an object which I may here observe never was, nor was ever intended to be,

of any direct pecuniary advantage to any individual Member of the Bar who took part in its promotion; and is now, and for the future will continue to be of importance, only so far as it may prove itself to be of utility to the profession and the public.

Viewed in this light, I have ventured to think that a detailed statement of the various steps that were taken towards the accomplishment of the contemplated object—in their order of date—together with a statement in detail of all the accompanying circumstances, might be not without interest to the body of the present subscribers, as well those still surviving who took part in the original proceedings, as those who have since become subscribers; and who will now learn, perhaps for the first time, the difficulties which were met with in maturing a design which, accomplished, has proved so useful to them: and with what painstaking and disinterested firmness those difficulties were at length overcome. And even with the survivors, although the memory of those occurrences in which they took part may have faded away, and, like footprints on the sands of time, may have been obliterated by the flood of new events and ever-recurring change to each of them,

Sic olim meminisse juvabit.

I propose to comprise the history of the origin of "The Law Reports" in four chronological divisions.

First division.—The state of professional opinion on the evils of Law Reporting, and the efforts made for their removal prior and up to the distribution of the paper of the 18th of May, 1863.

Second division.—The steps taken after the 18th of May, 1863, and up to the 2nd of December, 1863, the day on which the first meeting of the Bar was held.

Third division.—The steps taken after the 2nd of December, 1863, and up to the 28th of November, 1864, the day on which the third meeting of the Bar was held.

Fourth division.—The steps taken after the 28th of November, 1864, and up to the 2nd of November, 1865, the day on which "The Law Reports" were commenced.

Conclusion.

W. T. S. DANIEL.

December, 1884.

FIRST DIVISION.

The state of professional opinion upon the evils of Law Reporting, and the efforts made for their removal prior and up to the distribution of the paper of the 18th of May, 1863.

It is matter of notoriety that for a considerable period, perhaps for more than twenty years, before 1863 the evils of the then existing system of Law Reporting had been felt, and several well-intentioned efforts had been made, on behalf of the profession, to devise a remedy. As early, I believe, as 1843 or thereabouts an attempt was made by a few zealous Law Reformers to form a society to be called, under the shadow of a great name, the Verulam Society; one of the objects of this Society would appear to have been to devise a scheme for exercising professional control over the preparation and publication of the Reports of decisions in the Superior Courts of Law and Equity. The Society held several meetings; but the sparks of early zeal could not be kindled into a flame, the difficulties of devising a practical remedy for the admitted evils soon became so apparent that all attempts were abandoned as hopeless, and the Verulam Society ceased to exist, leaving behind it the memory of having done no harm and no good. One of the leading members of the defunct Society was the late Mr. Serjeant Cox; and after the collapse of that Society, he, probably foreseeing advantages which the Society failed to realize, but acting in another direction, about this time founded "The Law Times," which, as a commercial undertaking, prudently begun and skilfully maintained, has at length grown into one of the most valuable ephemeral legal publications of the day.

The Law Amendment Society was established in the year 1844, of which Mr. Serjeant Pulling was a most energetic member; its members, however, were not confined to the legal profession but included civilians, who were interested in all questions which called for amendment, by means chiefly of the Legislature. In the year 1848 the Society, at the instance of

Mr. Serjeant Pulling (who had long interested himself in the question) took up the question of Law Reporting with a view to a remedy, and for that purpose appointed a special Committee, directed "to consider what improvements, if any, may be made in the present system of Reporting, and generally in the mode of publication of Law Books."

Of this Committee Mr. Serjeant Pulling was the Chairman. He prepared the report, as a separate report confined to the subject of Law Reporting, and this report was adopted by the society, and extensively circulated.

I give this report *in extenso*, as I might fail to do justice to the labour and learning exhibited by it were I to attempt an analysis or abstract.

The following is a complete copy.

SOCIETY FOR PROMOTING THE AMENDMENT OF THE LAW.

REPORT of A SPECIAL COMMITTEE on the LAW REPORTING SYSTEM.

The following reference was made to a Special Committee :—

"To consider what improvements, if any, may be made in the present system of Reporting, and generally in the mode of publication of Law Books."

REPORT.—1849.

Your Committee have considered the two subjects submitted to them, and are of opinion that the present system of *law reporting* and *law book publication* are both capable of great improvement.

The evils arising from the present systems appear to the Committee to be of a very serious nature ; and it affords some degree of satisfaction to them to find that the remedies which seem the most practicable are not calculated to produce commensurate injury to any parties interested.

Considering the subject of Law Reporting to be of a more urgent nature than the other branch of the present reference your Committee have been induced to make a separate Report thereon, reserving the general question of publishing law books for a future report.

The judicial decisions of the Superior Courts at Westminster, as reported in the volumes recognised by the Courts, constitute at the present day, almost equally with the statute book, *the law of the land*.

They are, to use the language of Sir Matthew Hale (1), "the formal constituents of the common law;" and yet, by a singular inconsistency, whilst every Act of Parliament requires the sanction of the three estates of the realm, and its contents are communicated to the public in the most authentic form, the law laid down by our tribunals is in no respect *officially* promulgated. A statute creating the most trifling alteration in legal procedure is ushered into public notice in the most formal manner possible; a judicial exposition of one of the leading principles of our common law, materially affecting the future administration of justice, the rights of property, or the liberty of the subject, may take place without notice and without anticipation, amidst an inattentive crowd, whilst the voice of the Judge who delivers it may not reach any one beyond the parties immediately interested in the case which gives rise to it.

This remarkable inconsistency is productive of greater inconvenience at the present day than at any previous period. The concurrent jurisdiction of the Superior Courts; the establishment of local tribunals; the extensive jurisdiction of the Quarter Sessions; and other Courts remote from Westminster Hall, render it indispensable, in order to secure uniformity in the administration of justice, that the reports of the judicial exposition of the law at the fountain head should be accurately and expeditiously published, and in such a form as to secure their being generally accessible to all who are either officially or professionally engaged in administering it.

The anomalies connected with the system of Law Reporting have become especially conspicuous in modern times. The legal decisions which, in more remote ages, seem to have been preserved in the memory of official recorders (2), we know were in this country, during many reigns, promulgated by officers of the Courts in authentic form. The growth of our reporting system is thus described by the two great commentators on the Laws of England.

Lord Coke observes (3)—

"Of ancient time, in judgments at the Common Law, in cases of difficulties, either criminal or civil, the reasons and causes of the judgment were set down in the Record; and so it continued in the reigns of Edward I. and most part of Edward II.: and then there was

(1) C. L., c. 4, p. 139, ed. by Runnington.

(2) See an article on this subject in the "Edinburgh Review" for August, 1820, title, *Laws of the Scandinavians*.

(3) 4 Inst. p. 4.

no need of Reports. But in the reign of Edward III. (when the law was in his height), the causes and reasons of judgments, in respect of the multitude of them, are not set down in the Record; but then the great casuists and reporters of cases (*certain grave and sad men*), published the cases and the reasons and causes of the judgments and resolutions which, from the beginning of the reign of Edward III. and since, we have in print."

Sir William Blackstone's remarks on the system of reporting in his time are of a less favourable nature:—"The Reports are extant in a regular series from the reign of King Edward the Second inclusive; and from his time to that of Henry the Eighth, were taken by the prothonotaries or chief scribes of the court, at the expense of the Crown, and published annually, whence they are known under the denomination of the *Year Books*. And it is much to be wished that this beneficial custom had, under proper regulation, been continued to this day: for though King James the First, at the instance of Lord Bacon, appointed two reporters, with a handsome stipend, for this purpose, yet that wise institution was soon neglected, and from the reign of Henry the Eighth to the present time this task has been executed by many private and contemporary hands, who, *sometimes through haste and inaccuracy, sometimes through mistake and want of skill, have published very crude and imperfect (perhaps contradictory) accounts of one and the same determination.*" (1)

Many subsequent writers (2) have denounced our system of Law Reporting, and the seventy years which have elapsed since Sir William Blackstone wrote, have added to, rather than diminished, some of the evils he points out, for though in respect of accuracy, completeness, and skill, the reporters of the present day have cured many of the faults of their predecessors, yet from the vast increase of new questions of law and practice which at the present day annually arise in our Courts, and the great inducements which then arise for comprehensive reports, a new evil has grown up, unknown in the days of the learned commentator,—that the reports of the decided cases in any year for one term in any of the Superior Courts at the present day exceed, in bulk, those of all the tribunals in the country for the whole

(1) 1 Bl. Com. 71, 72.

(2) "The number of reporters, and the manner in which many cases are reported, are most serious evils,—evils which cannot be too much lamented, nor sufficiently exposed. The contradictory statements of the same case, the confounding the arguments, nay, assertions of the counsel, with the decisions of the Courts, the *obiter* and extra-judicial sayings of the Judges with the grounds of the judgment, the observations of the reporter with the points of the case, call aloud for the nicest and severest discrimination."—*Watkins' Principles of Conveyancing*, Introduction, p. xlii.

year at the period alluded to (1). Competition, ordinarily productive of so much good, in this instance adds to the evil. The higher class of reports, which really are or ought to be the records of the existing law, are made as elaborate as the cases will admit of. The whole of the written pleadings, the documentary evidence, the speeches and arguments of counsel, with the various authorities cited on each side, are often given even in cases where the actual decision of the Courts really expounds no new doctrine of law, or is confined to some isolated point. The time which is necessary to effect this, often prevents the decisions of our tribunals being communicated to the public until long after they have been given, and after suitors have taken a course in direct but unconscious opposition to them, and occasionally, even after other judges have unknowingly pronounced directly conflicting decisions. The bulk and expense too of these reports render their contents

(1) The following statistics of the Reports may not be devoid of interest.

COMMON LAW.

| Reporter. | Court. | Date. | No. of Vols. | Average of Pages to a Report. | Average of Cases in Volume. |
|--------------------------------------|---------------|------------------------|--------------|-------------------------------|-----------------------------|
| Croke. | K. B. & C. P. | 24 Eliz. to 16 Car. I. | 4 | 1·18 | 450 |
| Lord Raymond | — | Will. III. to Geo. II. | 2 | 1·34 | 597* |
| Salkeld | — | 1 Will. III. to Anne | 3 | 1·38 | 266* |
| Sir W. Blackstone | — | 1745 to 1779 | 2 | 1·8 | 307 |
| Burrows | K. B. | 1756—1770 | 5 | 3·8 | 153 |
| Douglas | — | 1779—1785 | 4 | 2·7 | 152 |
| East | — | 1800—1812 | 16 | 4·3 | 108 |
| Maule & Selwyn | — | 1813—1817 | 6 | 4·78 | 117 |
| Barn. & Ald. | — | 1817—1822 | 5 | 4·79 | 150 |
| Barn. & Cres. | — | 1822—1831 | 10 | 4·95 | 175 |
| Barn. & Ad. | — | 1831—1834 | 5 | 6 | 169 |
| Ad. & Ellis | — | 1834—1841 | 11 | 6·45 | 152 |
| Ditto N. S. | — | 1841—1848 | 8 | 7·75 | 131 |
| Henry Blackstone | C. P. | 1788—1796 | 2 | 3·9 | 170 |
| Bosanquet & Puller | — | 1804—1807 | 3 | 4 | 100 |
| Broderip & Bing. | — | 1820—1822 | 3 | 6·9 | 156 |
| Bingham | — | 1822—1834 | 9 | 4·5 | 172 |
| Ditto N. C. | — | 1834—1840 | 6 | 4·4 | 142 |
| Scott | — | 1835—1845 | 16 | 7·6 | 114 |
| Manning, Grain-ger, and Scott. . . . | — | 1845—1848 | 3 | 9·6 | 101 |
| Price | Exch. | 1814—1825 | 13 | 8·6 | 77 |
| Crompton, &c. | — | 1831—1836 | 6 | 4·79 | 141 |
| Meeson & Welsby | — | 1836—1847 | 15 | 6·65 | 129 |

* The pleadings take up in Lord Raymond's Reports 361 pages, and in Salkeld 100 pages additional.

inaccessible to the great majority of those who are officially or professionally expected to be acquainted with them, and the supply of rival productions simply adds to the cost without diminishing the inconvenience.

It has long been considered a practicable scheme for any barrister and bookseller who unite together with a view to notoriety or profit, to add to the existing list of Law Reports. It may be that such reports may be rarely referred to, that they may be inaccurate, that

EQUITY.

| Reporter. | Court. | Date. | No. of Vols. | Average of Pages to a Report. | Average of Cases in a Volume. |
|-----------------------|---------------|--------------|--------------|-------------------------------|-------------------------------|
| Peere Williams . . . | L. C. & Rolls | 1695 to 1735 | 3 | 3·85 | 200 |
| Ambler | — | 1737—1778 | 2 | 2·49 | 171 |
| Atkyns | — | 1736—1754 | 3 | 2·79 | 236 |
| Vesey, junr. | — | 1789—1812 | 19 | 5·33 | 128 |
| Vesey & Beames . . . | — | 1813—1814 | 3 | 4·6 | 82 |
| Merivale | — | 1815—1817 | 3 | 7·4 | 91 |
| Swanston | — | 1818—1820 | 3 | 6·5 | 92 |
| Jacob & Walker . . . | — | 1819—1821 | 2 | 7·3 | 91 |
| Jacob | — | 1821—1822 | 1 | 5·2 | 121 |
| Russell | — | 1823—1829 | 5 | 6·1 | 97 |
| Mylne & Keen | — | 1832—1835 | 3 | 8·1 | 87 |
| Mylne & Craig | Chancery . . | 1835—1841 | 5 | 10 | 72 |
| Phillips | — | 1841—1847 | 1 | 7 | 115 |
| Keen | Rolls | 1836—1839 | 2 | 8·5 | 96 |
| Beavan | — | 1839—1847 | 9 | 4·9 | 124 |
| Maddock | V.-C. of E. . | 1817—1826 | 6 | 4·9 | 104 |
| Simons | — | 1826—1847 | 15 | 6·2 | 102 |
| Young & Coll. | V.-C. K. B. . | 1841—1844 | 2 | 7·1 | 98 |
| Hare | V.-C. Wigram | 1841—1847 | 5 | 7·3 | 85 |
| Schoales & Lef. . . . | Irish | 1802—1806 | 2 | 9·7 | 62 |
| Rose | Bankruptcy . | 1810—1816 | 2 | 1·6 | 290 |
| Mont. & Ayrton . . . | — | 1834—1838 | 3 | 3·7 | 213 |

Dalloz. Recueil Periodique et Critique de Jurisprudence, par M. Dalloz aîné et M. Armand Dalloz, son frère.

| | Year. | Cases. | Pages. | Average Length of Report. | Total Average. |
|----------------------|-------|--------|--------|---------------------------|----------------|
| Cases computed . . . | 1846 | 1408 | 524 | ·37 | ·42 |
| — | 1845 | 1570 | 613 | ·39 | |
| — | 1844 | 1372 | 640 | ·46 | |
| — | 1843 | 1428 | 712 | ·49 | |

N.B.—The pages are double quarto and the type rather small

they may be of little or no authority,—they nevertheless remain. They tend to confuse the science; they muddy the stream and bring on, more especially in some after age, all the evils described by Blackstone. A case of great importance (1) was decided a few years ago upon the authority of a note in Lofft's Reports (2), which one of the learned Judges observed, with some bitterness, he had never heard three cases quoted from during a professional life of forty years (3); and some of the inferior law reports of the present day may, perhaps, meet a similar fate. But even if all the reports which are published were correct and given by competent persons, they are now so numerous that they cannot be known to one tithe of the practitioners in the law. They are beyond the reach, not only of the public, but of the great body of the profession. Indeed, it is not too much to say that few of the Judges or the Bar (and hardly any of the solicitors) take in all the current reports. Wherever there is the smallest opening, the profitable trade of law bookselling establishes a fresh series of reports. In each of the Common Law Courts, it is true the rival series of reports which have been recently the longest established have been amalgamated; but long before this point was gained numerous series of reports had been set on foot, professedly confined to *practice cases*, *criminal cases*, *sessions' cases*, *registration cases*, *railway cases*, *parliamentary cases*, &c., but containing reports of decisions vouched as correct by barristers, whose accuracy must, under the existing system, be assumed.

The competition of the reporting system is thus carried on without regard to the interests of the profession or public. The gentlemen who undertake these reports are often highly competent men; indeed, many of them have been raised to the bench of Westminster Hall. Independent of the profit of reporting, it is a good channel to professional notoriety; but here is one great evil of the system. If the reporter has other professional engagements, he loses his anxiety about his reports, he throws up his office when he pleases (and cannot be blamed for this), and it has been held that the bookseller cannot compel him to perform it. Thus we have chasms in our law reports, which will occur readily to any professional reader, which can never be supplied. It is well known that an eminent counsel (formerly a reporter) practising at the Chancery Bar, has at the present moment notes of the decisions of a deceased Lord Chancellor, taken by the learned counsel in his character of reporter, but to this time unknown as law to all the profession save the parties engaged in these causes. In the preface

(1) *Smith v. Doe* dem. *Jersey*, 1 B. & B. 97; 2 B. & B. 536.

(2) *Hottley v. Scott*, Lofft, 316.

(3) *Observations of Park, J.*, 2 B. & B. 536.

to a work recently published by a late Lord Chancellor of Ireland (1), it is observed, "whilst at the bar, the author retained all the printed cases on appeal in which he was counsel, with his own notes and the notes of the argument. From this source, principally, he has been enabled to add the cases not at present reported between 1821 and 1826.

Thus, under the present system of reporting, the law expounded in Westminster Hall may not only remain for years concealed from the public, but the professed reporter himself, or the counsel in the case, may alone be in possession of the decisions, at the risk of their being used at any moment to contradict the law as universally received amongst the Profession,

This inconvenience is thus alluded to in the preface to Watkins' Principles of Conveyancing:—"Supposing that a person should be so fortunate as to be able to extract something comprehensible out of printed contradictions, yet other contradictions may make their appearance in manuscript, and, overthrowing all his hard-earned knowledge, remind him once again of the glorious uncertainty of the law. Is the law of England to depend upon the private note of an individual and to which an individual can only have access? Is a judge to say; 'Lo! I have the law of England on this point in my pocket: there is a note of the case which contains an exact statement of the whole facts, and the decision of my Lord A. or my Lord B. upon them. He was a great, a very great man; I am bound by his decision: all you have been reading was erroneous. The printed books are inaccurate;—I cannot go into principle. The point is settled by this case?' Under such circumstances, who is to know when he is right or when he is wrong? If conclusions from unquestionable principles are to be overthrown in the last stage of a suit by private memoranda, who can hope to become acquainted with the laws of England?—and who that retains any portion of rationality would waste his time and his talents in so fruitless an attempt? Is a paper evidencing the law of England to be buttoned up in the side pocket of a judge, or to serve for a mouse to sit upon in the dusty corner of a private library? If the law of England is to be deduced from adjudged cases, let the reports of those adjudged cases be *certain, known, and authenticated.*"

The inconvenience arising from the sudden retiring of law reporters has been already noticed; the present system, however, enables, and indeed induces, the publisher of a series of Reports, on finding them at any time not sufficiently remunerative, to stop the supply, and leave the notes already collected to serve the purpose which is thus reprehended; and hence the cause of those long intervals in the Reports of some of the Courts.

(1) Sugden's Law of Property, preface, p. 4.

The Reporter, however, under the present system may unavoidably be absent, or purposely omit cases which he deems not to be authorities; and we have heard of an eminent *Nisi Prius* reporter preserving in MS. a whole pile of decisions of a late Chief Justice which he deemed *bad law*.

The evils, too, arising from the *inaccuracy* of some of the existing reports are often practically felt by the profession. In an article on this subject in the "Law Review" of February, 1848, a long list of instances (taken from the then last numbers of the several Reports) is given, where cases solemnly cited and relied on in argument, were denounced as *incorrectly, inaccurately, or falsely* reported; and it is a common thing to hear of a particular report or set of reports, that they are *not of much authority*. Hence the suitor, even after he has discovered what the law is reported to be, may find to his cost that such report, however authentic in appearance, is inaccurate.

It is but little consolation to say, on the trial of a cause, "That case is not law," after it has misled half the kingdom (1).

The Committee do not wish to say any thing in this place as to the present style of Law Reporting; still it will hardly be denied that with few exceptions the volumes of reports are commonly too verbose, and too open to the reproach of *book-making*. In a useful article on Law Reports in a recent number of the "Law Magazine" (2), a reform of the existing style of Law Reporting is warmly advocated. "Instead of a collection of judicial decisions," it is observed, "with the facts necessary to support them, and the grounds upon which they are made, carefully and briefly set out, we have volumes upon volumes of reported cases, in which the points important to be known bear but a small proportion to the mass of useless undigested matter with which these volumes are filled. The inconveniences of such a system are evident; instead of having to read through a few pages, and at once obtaining a clear comprehension of a particular point, we have to wade through an enormous quantity of matter, which, so far from throwing additional light upon the subject, confuses by the numerous doubts and difficulties by which each case is surrounded; the consequence is, we do not obtain that certainty in the law which it should be the object of reports to accomplish."

To sum up in a few words the evils and inconveniences of the existing system of Law Reporting, there is no guarantee afforded to the public that the judicial exposition of the law will be reported at all, or reported correctly—or in time to prevent mistakes—or in such a manner, with respect to conciseness, form, and price, as to be accessible to those whom it so vitally affects.

(1) Preface to Watkins' Conveyancing, p. 21, note 10.

(2) No. 16, N. S. art. 1, p. 1, Aug. 1848.

Whilst these various evils of the present system have forced themselves upon the attention of your Committee, they have been much struck by the fact, that the present voluntary outlay of labour, skill, and money on the part of the legal profession in the shape of Law Reports, are amply sufficient to secure, under a systematic direction, all that could be desired in the shape of an authentic series of Reports to be produced regularly, expeditiously, and cheaply.

There are at this moment upwards of forty barristers of acknowledged skill constantly employed in the preparation of what are deemed the *regular Reports* of the decisions in the Courts of Westminster Hall, the House of Lords, &c. (1), and it is believed there are an equal number of members of the Bar occupied in reporting for the various weekly *legal periodicals*, &c., or occasionally assisting the class first alluded to; and among these additional reporters are many of considerable skill and legal acquirements.

The present expense of a complete set of the Reports for the current year—exclusive of the ephemeral publications, the reports of the Courts at Doctors' Commons, and the various classified reports enumerated before, as magistrates' cases, railway cases, election cases, &c.—amounts to the sum of £30; and estimating the present average circulation of these books at 750, it is obvious that the annual outlay to the Profession, in purchasing them, amounts to about £22,500; and if to this sum be added also the outlay of the Profession in the reports of less circulation, as the Courts at Doctors' Commons, Irish reports, election reports, magistrates' cases, &c., and the weekly periodicals, it is plain that the expense comes to many thousands more. It would seem that not more than £9000 is paid to the reporters themselves, and the remainder is carried to the account of the expenses of printing and the profits of the publishers and booksellers.

The high price of law books has for years been a common subject of complaint; and when it is considered what a small proportion of this price goes into the pocket of the author or compiler, it is remarkable that the Profession, who are at once the producers and consumers, should have never yet attempted a remedy.

The commission allowances, &c., to the *trade* on the sale of books generally amount to between 30 and 40 per cent., and sometimes even more, on the cost of a book (2). Thus on a book of Law Reports, on

(1) Viz., the three series of Common Law Reports; the "Law Journal;" the Chancery Reports; the House of Lords Reports; the Nisi Prius Reports; and the Practice Reports.

(2) Mr. Babbage, in his "Economy of Manufactures," estimates the share of profits derived by the trade from books sold on an author's own account as 54 per cent. (p. 261). A less allowance, however, is usual in the law book trade. This allowance we believe to be as follows:—To the retail dealer 20 per cent. on Reports and 25 on other books; to the wholesale bookseller 5 per cent.

which the smallest allowance is made, if the money is to be accounted for to the author, first of all 20 per cent. on £2, its nominal price, is allowed to the retail bookseller; 5 per cent. more, and one copy in twenty-five, in all 9 per cent., or 3*s.* 8*d.*, to the wholesale bookseller; and 7½ per cent. at least, or 3*s.*, by way of commission to printing and advertisement expenses and the publisher; only £1 5*s.* 4*d.* being left for the remuneration of the author. Hence it obviously requires a sale of 400 copies of such a work to save the proprietor of the copyright from positive loss; and the publishers, relying on this, generally succeed in getting the copyrights of the Reports into their own hands.

If in any case a society for the purpose of publishing books were practicable, it would seem most peculiarly so among the legal profession.

The "Law List" of the present year contains the names of about 14,000 practising Barristers, Attorneys, and Solicitors, and this list would be vastly increased by an addition of the local and colonial Judges, Magistrates, and Law Officers, and the crowd of students, articulated clerks, &c. preparing themselves for the profession.

To the majority of this numerous class the serious expense of the Law Reports in their present shape is the principal objection which prevents their being used.

Now, if instead of the limited average circulation on which the above calculations are formed, the reports were generally circulated amongst the Profession—the majority of them, say, for the sake of round numbers, 10,000—annually contributing to a fund for the purpose a sum less than it may be assumed they have at present annually to lay out, it is pretty clear that, instead of £30, the small annual sum of *three pounds* would be amply sufficient to secure to each of the contributors a supply of all the reports even in their present form: a fact which may be easily rendered intelligible.

The printing and binding of 1000 copies of an ordinary octavo volume of Law Reports, or even 800 pages, costs about £330, and every additional 1000 copies about £160; and thus 10,000 copies of such a work can be produced for about £1760: and if the expenses of ten series of Reports, at this rate, be added to the sum already estimated as the amount of the reporters' present remuneration, it will

more, and also one copy in twenty-five, or 9 per cent.; and to the publisher between 7½ and 10 per cent. for commission. The principal law publishers have very recently entered into an arrangement to refuse allowing any booksellers besides themselves more than 10 per cent. on retail sales; but it by no means follows that this deduction is discontinued. In the authors' accounts all sales are still credited as made to the principal law booksellers, and at the wholesale trade prices.

be found that the whole expense of a set of Reports for each Court, as voluminous as they are at present, would leave a large surplus from the amount of the small annual contribution suggested.

By a recent regulation in the House of Lords, in accordance with the practice in France and the United States of America, law reporters are, at this day, officially appointed. In the American Courts, the reporters, both in salary and rank, come next after the Attorney-General of the State.

The general restoration of the old system of official reporters in our Courts has been often advocated. Our Law Reports would thus be stamped with some degree of authority, and the unseemly competition in the avocation of *bookmaking*, which the present system engenders, would be got rid of. However this may be, it seems to your Committee, that were any plan actually in force for the Profession having the direct control over the publication of the Reports, many other advantages than mere economy would be gained. The division of labour between the reporters, when so large a number as that which we have assumed are employed—and the system and regularity which this would create—would go far to put an end to many of the evils which at present exist in law reporting. The quality and not the quantity of the material would be more studied; and the omission of a really important decision would be deemed as serious a neglect in the reporter as an inaccurate report of it.

This Report, though widely circulated among the profession, and valuable as is the information contained in it, was the fig-tree full of leaves but shewing no fruit; the suggestions it contained did not with any distinctness point to an efficient practical remedy. It suggested, indeed, the setting up a set of Reports under the control of the Profession, but it did not contain any scheme for giving effect to a suggestion so valuable and important. It was theoretical and not practical.

The Law Amendment Society however, being, as is well known, thoroughly in earnest in what it undertakes, did not allow a matter of such professional and public interest and importance to fall through, and therefore took up the subject again in 1853, and for that purpose again appointed a Special Committee on Law Reporting, and the following reference was made to that Committee "to consider what improvement, if any, may be made in the present system of Law Reporting."

In due time this Committee made their report.

In the labours of the Committee and in the preparation of the Report the Profession and the public will again gratefully recognise the services rendered by Mr. Serjeant Pulling.

The same reasons which induced me to print the Report of 1849 *in extenso* lead me to adopt the same course with this report of 1853.

SOCIETY FOR PROMOTING THE AMENDMENT OF THE LAW.

LAW REPORTING REFORM.

SPECIAL COMMITTEE ON LAW REPORTING.

THE following reference was made to this Committee :—

"To consider what improvement, if any, may be made in the present system of Law Reporting."

REPORT.—1853.

1. In the year 1849 a Committee on *Law Reporting* was appointed by this Society, and in the Report (1) of that Committee the ancient regulations for making known the Law laid down by the Judges in Westminster Hall are discussed at length, and the evils which arise from the absence of any such regulations at the present time are forcibly pointed out; there being, as the Committee then observed, no guarantee now afforded to the public that the exposition of the Law by the Judges of the land will be reported at all, or reported correctly, or in time to prevent mistakes, or in such a manner with respect to conciseness, form, and price, as to be accessible to all those whom it so vitally affects.

2. The Report in question was fully considered in this Society, and was widely circulated in the Legal Profession, amongst the members of which it attracted considerable attention; but though, as your Committee believe, the recommendations then made for the reform of the present system of Law Reporting met with general acquiescence from those who are professionally conversant with the Law Reports at present in use in Westminster Hall, no steps have yet been taken to remedy the serious evils and inconveniences complained of.

3. Your Committee having, in accordance with the reference now made to them, reconsidered our system of Law Reporting, entirely

agree with the former Committee in denouncing it as defective and pernicious, both positively, as respects the mode of making known the exposition of the Law of the land in Westminster Hall, and comparatively, as regards the older practice which prevailed several centuries ago; when the Crown appointed official Reporters of legal decisions by letters patent, and the practice adopted in the present time in the United States of America (1), where the office of State Reporter is regulated by general law (2).

4. Bearing in mind always that the exposition of the general principles of the Law by the Judges in Westminster Hall for the most part equally affects the subject with the Law positively enacted by the Legislature,—that the Law of Property, real and personal, in this country, is for the most part governed by precedents,—and that our comprehensive system of commercial law has been entirely moulded into its present form from the Judicial Bench, the contrast between the practice of promulgating the Law enacted by the Legislature and that which is from time to time expounded by our Judges is very remarkable.

5. The authority of a judicial decision of the Courts of Westminster Hall in practice, at least, equals that of an Act of the Supreme Legislature. It is, until overruled, binding on all the inferior judges and magistrates of the land, affects the title to property and the conduct of commercial transactions, and generally controls the administration of justice. It can be upset only by the decision of a Court of Error, or the direct interposition of Parliament.

Judicial precedents are, therefore, to use the language of Bentham, *Judge-made laws*, and, when long acted upon, become of equal force with the express enactments of the Legislature (3); and if it is the duty of the State to make the Law of the land universally known, there can be no reason why the publication of the Law declared from the Bench should be less formal and less complete than that of the Law declared by the Legislature.

6. In the previous Report made to the Society on this subject it was shewn how the disuse of the ancient practice which prevailed in

(1) The office of *State Reporter* in the United States was first established by a special statute in 1817 (Statutes at Large of the United States, 1817, Sess. 2. c. 63, providing "for reports of the decisions of the Supreme Courts") and regulated by a variety of subsequent statutes. (Id. ib. 1820, 1823, 1827, and Sess. 2 of 1842, cap. 264.)

(2) The duties pertaining to the office form the subject of a distinct chapter in the Code of Civil Procedure of New York. (Code of Civil Procedure of New York, c. 3, tit. 4, c. 3, sec. 369-372. pa. 155.)

(3) See on this point, Vin. Abr. Precedents, B. 15; *Vaughan v. Mansel*, Hardress, p. 67; 2 Lilly's Abridgment, p. 344; *Tate v. Windnam*, Cro. Eliz. 65.

Westminster Hall, of the Law expounded by the Judges being published officially in the *Year-books*, and subsequently by Reporters expressly authorized for the purpose, has led to the inconveniences which are now experienced by those who are officially or professionally engaged in the practice of the Law in immediately ascertaining what the Law laid down by the Judges of the land is.

7. There is, at present, it must be remembered, no class of persons officially authorized or required to report the decisions of our Courts at all; no limit to the accumulation of publications professing to report those decisions; no time prescribed at which they must make their appearance—a week, a month, a year, or a quarter of a century (1),—from the time when the Law has been expounded; and even when the Reports have been thus compiled, there is not only an absence of convenience for making them generally known to the local judges, magistrates, and official and professional persons who have to dispense the Law throughout the empire, but the high prices charged by the law booksellers tend to confine the use of the higher class of Reports to a very small number of professional subscribers; and local judges, magistrates, and professional lawyers are every day exposed to the inconvenience of having cited, by way of authority, notes of decisions of the Judges at Westminster Hall, contained in legal publications which, more or less, partake of the character of mere newspapers.

8. Your Committee have had their attention directed to the subject of the great labour and expense at present voluntarily incurred by the Legal Profession in the preparation of Law Reports, and entirely acquiesce in the opinion of the former Committee of this Society, that by a far less expenditure of both labour and money on the part of the Profession, Reports equal at least in material, much more regularly and expeditiously prepared, and more comprehensive than the present books of Reports, might, by a proper system of management, be published at such a cost as to be made accessible to every one connected with the administration of justice throughout the British dominions; in other words, that by a trifling individual contribution from one half the persons who officially or professionally require the use of Law Reports, the annual expenses of reporting would be amply

(1) In the valuable work published by Lord St. Leonards in the year 1849, are contained for the first time notes of cases decided by the House of Lords between 1821 and 1826. See preface to Sugden's Law of Property, as administered by the House of Lords, p. iv.

West's Reports of Lord Hardwicke's decisions from 1736 to 1739 were first published in 1828. Ridgway's Reports of Lord Hardwicke's earlier decisions were first published in 1794, whilst Sir Orlando Bridgman's judgments in the reign of Charles II. never appeared in print until 1823.

provided for, adequate remuneration being afforded for the Reporters, and ample funds left for the expenses of printing and publishing.

9. The Legal Profession, which in England alone includes more than 12,000 members, it is proved do actually, at present, at least, expend among them upwards of £25,000 per annum in the purchase of Reports; and whilst this large expenditure has been shewn to be amply sufficient to secure to the public the services of the greater number and certainly of the best of the Reporters in an official capacity, and the supply of copies of the Reports to every single member of the Profession, and to every Court of Justice in the empire, the absence at present of proper regulations as to the mode and cost of publication causes a useless expenditure of both labour and money; there being often half a dozen versions of the report of the same case, and several series of Reports generally published. And as the highest class of Reports (that is, the Reports of the highest authority) are used only by about one-twelfth of the members of the Profession, they become almost unknown in our Colonial Courts, and inaccessible in the majority of Local Courts in this country, and, generally speaking, even at the Assizes and at Quarter Sessions.

10. To effect a combined action on the part of the large number of gentlemen at present engaged in law reporting; to prevent a variety of printed versions of the same case; to make the books of Reports contain all judicial decisions by which the future administration of justice is effected, and these only; to avoid mere *book-making*, and to insure at once expedition, accuracy, completeness, and cheapness in the Reports, has long been a desideratum in the Profession, and of late years various plans have been proposed in order to attain it.

11. The plan of a voluntary association has been suggested among the Reporters, and those who professionally use the Reports; and it has been urged, that inasmuch as the Profession of the Law composes at once those who frame the Reports and those who use them,—in fact, the producers and consumers,—its members are directly concerned in the success of such an association, and ought to establish it without adventitious aid: but when the difficulties are considered of inducing a sufficient number of individuals to act in unison, and gratuitously incur the responsibility of so comprehensive an undertaking, and how many conflicting interests would then have to be dealt with,—your Committee have arrived at the conclusion that nothing short of an authorized Board invested with the power of superintending the Reports in our several Courts, and regulating the time, mode, and expense of publication, will effectually cure the evils now so loudly complained of.

12. A voluntary Society consisting of a less number than 5000 subscribers would not be able to effectually publish Reports of such a

cost as to destroy competition, and the result of the attempt would possibly be to add merely to the existing evils caused by rival series of contemporaneous Reports, and even were the majority of the present Reporters to join such a Society, the series of Reports hitherto conducted by them, might still be conducted by other hands.

13. Were a competent Board, however, invested with the power of officially publishing the Reports at a small price out of a fund placed at their disposal, there would be no difficulty, it is apprehended, in inducing the best of the present Reporters to concur; for an arrangement could thus easily be effected for making their remuneration at least equal to that which they at present receive, and affording them material advantages in other respects; and the cost to subscribers could at once be fixed at such a sum as to effectually destroy competition, and not only to secure the adherence of all those who at present annually pay for the Reports, but of a large number of other parties who are now precluded on the score of economy from doing so.

14. Taking the supposed minimum annual expenditure of each working member of the Profession in the purchase of Law Reports at the present time at £3, it has appeared to your Committee hardly possible for a Board which should publish authorized Reports of all the decisions of our Courts, not to be self-supporting; and your Committee feel, therefore, that no difficulty can be anticipated in a financial point of view, in procuring the authentic publication of the Reports of the decisions of our Courts in such a form as to make them accessible to every individual engaged in the administration of the law.

15. Your Committee have, however, already pointed out that it is *the duty* of the State to undertake the work. The statutes at large have from the time of the first invention of printing been published under a formal arrangement with the State. The Houses of Parliament annually print and publish, at the public cost, waggon loads of books and papers which are for the most part necessarily of far less importance to the subject than the Reports of judicial decisions, expounding the Law of the land; and considering the number of local judges and magistrates who are now invested with the duties of dispensing the Law in this country, and the extent of our colonies, where the decisions of the Courts at Westminster Hall are professedly followed, it is hardly too much to expect that every Court of Justice throughout the empire should at least have authentic volumes of the Law provided at the public cost.

16. Now whilst the publication of Parliamentary proceedings is productive of great expense to the State, which the sale of copies to private individuals very slightly diminishes, it is proved beyond a

doubt that the present very limited sale of Law Reports does actually realise a much larger sum than would be required to cover the whole expense of publishing ten times the number of copies under an improved system. The statistics collected in the Report of the Committee of this Society in 1849 fully justified the belief, that were complete Reports of the decisions of the Courts published officially at at a tenth of their present cost,—say at £3 per annum instead of £30,—there would at least be ten times the present number of subscribers (1); and your Committee must add, that this very circumstance shews that the duty of publishing authentic Reports of the decisions of our Courts at Westminster is one which there is the less excuse to the State for neglecting, when it is considered that in thus discharging an imperative obligation connected with the administration of justice the Government would hardly incur the smallest risk of expense. As the establishment of regulations for securing the proper preparation and speedy publication of our Law Reports in an authentic form by a public Board so as to ensure their voluntary adoption is then free from the difficulties which surround private undertakings, and is proved to be practicable, your Committee submit to this Society the following plan for effecting the objects in view.

17. Your Committee suggest that a permanent *Board* composed of Commissioners should be appointed by the Crown for the purpose of supervising and editing the Reports of judicial decisions.

18. That the Board should, subject to the sanction of the presiding Judges in their respective Courts, select a sufficient number of competent Reporters for each of the Superior Courts, to rank and be remunerated according to seniority of appointment; and that the cases collected from time to time by such authorized reporters should be printed and published by the Board at regular intervals as soon as practicable after the decisions are pronounced.

19. That an office should be provided to which all reports of cases should be sent in order to be submitted to the Board, and after the Reports are printed they should be sold by the Board at the smallest practicable rate to the public, a sufficient number of the Reports being supplied gratis to every Assize Court and every Local Court in the country for official reference.

(1) The aggregate number of subscriptions to the several Reports now published by the booksellers can hardly be estimated at less than 15,000; but assuming that a great many gentlemen subscribe to several series of Reports at the same time, the number of distinct individuals who contribute to the expense of these Reports may, at the least, be estimated at 5000; and then, applying the same mode of calculation to the other Reports, such as "The Law Journal," "The Jurist," "The Law Times," "The Law Reporter," "The Justice of the Peace," "The Legal Observer," &c., there will at least be found 5000 more distinct subscribers to these publications.

20. That Government should advance a sufficient sum to the Board in the first instance to meet the expenses, and out of the Funds collected by the Board by the sale of the Reports should be paid the salaries of the Reporters and the general expenses of the Board, and the remainder applied in repaying whatever had been entrusted to them by the Government: and at the end of each year a Debtor and Creditor account should be made out and submitted to the Treasury, shewing the various items of expenditure, and shewing the receipts of the Board in the execution of their trust,—the Treasury having power to certify that the charge for copies of the Reports ought to be reduced in case any considerable surplus remained after paying all the expenses of the Board, and of preparing, printing, and publishing the Reports.

21. To avoid as far as possible personal bias in the selection of Reporters, your Committee suggest that a graduated scale of remuneration should be established, and the Gentlemen entitled to the higher rate of remuneration should be those only who had been before engaged in the duties of reporting, every newly appointed Reporter ranking as the junior for the time being with the smallest rate of remuneration. Your Committee further suggest, that the Board should hear complaints made against the Reporters on the score of dilatoriness, inaccuracy, or incompleteness of their Reports, and that on sufficient ground of complaint being satisfactorily made out and certified to the Judges, the defaulting Reporter should be removed or suspended, and succeeded by the Gentleman next in seniority.

A sufficient staff of competent Reporters being appointed by each Court, and the speedy publication of the Reports in an authentic form being secured at a small cost, your Committee believe that each decision would be authentically reported as soon as it was necessary to quote it; but your Committee suggest that where the decision required to be referred to should be so recent as to render it impracticable to publish it, a certified note of it from the authorized Reporter should be required by the Judge, and given by the Board for a reasonable fee.

This Report, in paragraphs 11, 12, 13, 15, 17, 18, 19, 20, 21, and 22, distinctly raises the issue between the preference of a set of Reports on the Voluntary System as suggested by the Report of 1849, and a set of Reports supported by authority according to the scheme there shadowed forth.

It will be seen at once that there is a radical difference between the two systems. The Voluntary System was rejected, and the

State-aided System recommended for adoption, but it failed to obtain any support from the Government.

In November, 1854, "The Jurist" advocated the establishment of an authorized staff of Reporters for the future, and offered, if such a reform were established on a sound basis, to retire and seek some other form of existence (see "Jurist," 11th November, 1854).

In May, 1855, "The Law Magazine" proposed as a remedy the establishment by Act of Parliament of a staff of authorized Reporters, but limited to the Common Law Courts:—a proposal, which, as might be expected, came to nothing.

In the same year, 1855, Mr. W. Ewart, M.P. for Dumfries, and a Member of the Law Amendment Society, gave notice in the House of Commons of a motion for the appointment of a Select Committee to inquire into the expediency of appointing authorized Reporters in the Courts of Law; but the motion was not made, and of course dropped.

In 1858, at the Social Science Congress, held at Liverpool, the Right Honorable Joseph Napier (then Lord Chancellor of Ireland) in his address as President of the Jurisprudence Department, suggested that judicial decisions should be authenticated, and with that view should be reported by responsible officers and published under responsible authority.

In 1862 the late Mr. George Sweet (a conveyancer of established reputation) on the 10th of February of that year read a paper before the Juridical Society, in which he advocated the appointment of a Chief Reporter, with two or more salaried assistants for each Court, and expressed his opinion that a sufficient sum might be raised by sale of such reports to defray expenses—in other words that such reports would be self-supporting.

In the early part of 1863 my attention was frequently called to the great unwillingness of the Equity Judges to listen to ephemeral reports of cases and to short-hand writers' notes. Lord Justice Knight Bruce on one occasion, in my hearing, protested against the practice of reporting whatever happened to fall from the Judges and the practice of citing that as an authority. His Lordship more than once in my hearing distinguished between

the *ἐπεα πτερόεντα* and the *ἐπεα χυυσα* of the Judge, and insisted that nothing should be cited as authority but that which the Judge had deliberately made the ground of his decision, and his Lordship frequently referred to Lord Coke's observations on Reports and Reporters.

The effect produced on my mind by these frequently expressed views of that great Judge led me to consider whether it would be practicable, through the agency of the Bar, to devise a scheme for the establishment of a set of Reports which should be independent of all Government assistance, be managed by the Bar—be accepted by the Judges, and be self-supporting, and thus practically to apply in principle the suggestion contained in the Report of 1849, and which had been rejected in the Report of 1853.

The idea was vague and *in nubibus*; but under its influence, and in the hope of getting such assistance from the Bar as would give it a practical shape, I prepared, procured to be printed, and circulated privately among the Bar a paper of which the following is a copy.

SUGGESTIONS FOR AN ALTERATION *in the present* SYSTEM OF
LAW REPORTING *submitted for the* CONSIDERATION OF THE
BAR, by W. T. S. DANIEL, Q.C.

THE present system of Law Reporting is the subject of very general and well-founded complaint on the part as well of the Judges as of all classes of practitioners. The evils complained of are various; but the following may be regarded as the chief:—

1. Confusion and uncertainty in the law, producing perplexity in the administration of justice; this arises sometimes from the practice of indiscriminately reporting cases without reference to the importance or character of the decisions—sometimes from the reports containing an inaccurate or imperfect statement of the facts on which the decisions are founded.
2. The difficulty of digesting the enormous mass of constantly accumulating materials and distinguishing the good from the bad.
3. The expense to the practitioner arising from the necessity of possessing himself of the several series of contemporaneous reports in that branch of the profession in which he practises.

All these evils, it is obvious, are attributable to one cause:—The multiplication of contemporaneous Reports. This multiplication has arisen from applying the principle of competition to correct the evils

of prolixity, delay, and expense incident to the system of authorized reporting. The evils of prolixity and delay have to a great extent been cured; but the evil of expense has been aggravated, and new evils created, namely, confusion and uncertainty in the law producing perplexity in the administration of justice.

Everybody is calling out for a remedy. Some say, before anything is done let there be inquiry, and to that end pray the Lord Chancellor to issue a Royal Commission. To these I respectfully answer, the evil is felt and admitted, and the cause is patent. The stage of inquiry is passed. What is wanted is a remedy, and experience proclaims that a Royal Commission can only report the evil, and suggest, but not provide, the remedy. Others say, the decisions of the Judges are the expositions of the law *ex non scripto*, and it is as much the duty of the State to promulgate to the public this branch of the law, as it is its duty to promulgate the *lex ex scripto*—to publish the Statutes; and therefore say they, let Government be applied to for a grant to start the publication and guarantee it against loss. To these, I with equal respect answer;—Government assistance would imply Government control; and this would involve the evils of an assumption of patronage and an attempt at privilege—thus bringing round again the evils of a monopoly to be again corrected by the equivalent evils of uncontrolled competition. I venture to suggest that without either a Royal Commission or a Government Grant it is within the power of the Bar to supply an adequate remedy.

I recognise and base my suggestions upon the principle, that the proper preparation and publication of those judicial decisions, which are expositions of the law *ex non scripto*, is a public duty, and that the public have a right to expect that it will be discharged by a recognised body in the State qualified for the purpose. The qualifications of such a body should be—Independence of the Government, Co-operation with, but not Dependence upon, the Judicature, Adequate knowledge of the law and Experience in the practice of the Courts, combined with special skill and experience in the art of reporting. These several qualifications are possessed in the highest degree by the Bar, and by no other body of men—and the Bar form a recognised body in the State—Why should they not combine and undertake the duty? My proposal is that they should:—and for that purpose I suggest that the Members of the Bar now engaged in reporting, or such of them as should think proper, together with any other Members of the Bar who may offer acceptable services or co-operation, should form themselves into a body of Associated Reporters, and by means of a proper system of division of labour and editorial superintendence, undertake the preparation and publication in *weekly numbers*, at a moderate charge, of the decisions of all the superior Courts of Law and Equity, including

the Probate and Divorce Courts, the Admiralty Court, and the House of Lords, and Privy Council.

If this were well done, my expectation is, that the profession and the public would thankfully accept the publication as a sufficient record of all the decisions in Courts of Justice which they desire to possess, and that the demand on the part of the public for contemporaneous publications of the same decisions would greatly diminish, and in time cease. The demand for the one publication would then be increased to an extent much beyond that which is enjoyed by any of the existing publications; and thus far the advantages of a monopoly would be secured without its evils. The reporting which suffices for Newspapers would of course not be interfered with.

If the public and profession were thus satisfied by an early, efficient and cheap publication of all the Reports, the Judges would, I think, soon find that, on the ground of public benefit, it would be expedient and desirable not to allow any other Reports to be cited as authority before them; and thus the advantages of a system of authorized Reports would be secured without its evils. The entire success of the plan rests, it will be seen, upon the sustained combination of expedition, efficiency, and cheapness.

Do vested interests stand in the way? Let it be remembered that inasmuch as all the Reports now cited in the Courts are supplied by Barristers, vested interests in the existing publications rest for their support upon the skill and labour of the Bar. To the extent to which that skill and labour are now adequately remunerated, and the vested interest is no more than a legitimate commercial profit, the plan I propose would, I think, provide means for fairly dealing with such vested interests. If there are any vested interests which arise from profits of commercial undertakings in which the labours of the Bar are inadequately remunerated, all such vested interests would properly be left to take care of themselves.

Is Capital a difficulty? I imagine the existing publishers would see their interest in promoting rather than in opposing the scheme, for I doubt whether the present unrestrained competition does not produce its evils to them as well as others. I should, therefore, if the Bar entertained my plan, suggest that the publishers be approached with proposals which should involve fair participation in profits, based upon the principle that the publishers should be agents not principals—in short, that the copyright should be considered as the property of the body of Associated Reporters. If the publishers declined to co-operate, I would try a subscription list by application to the Judges, and the several members of both branches of the profession, and with strong hopes of success. A good subscription list would, I doubt not, be a sufficient inducement to a printer of

established reputation and sufficient capital, to run a fair share of the risk.

The details of the plan I do not enter upon—my present object is to know whether my brethen of the Bar think the plan feasible and would be willing to aid in carrying it into execution. I am anxious to collect their opinions, and shall be obliged by any answer with which I may be favoured to this communication.

If I find that these suggestions are favourably received, I should then desire to obtain the co-operation of those who would be willing to be coadjutors, with a view to maturing a plan for commencing next Michaelmas Term.

10, Old Buildings, Lincoln's Inn,
18th May, 1863.

Slightly deviating from the chronological order which I had prescribed for myself, I will here state that this paper at once attracted attention, and, by some means unknown to me, a copy of it was printed in "The Jurist" of the 6th of June, 1863. On the 12th of June the Lord Chancellor Westbury made his celebrated speech in the House of Lords on the Statute Law, in which he also described in striking language the confusion in which the Case Law stood, but his Lordship did not suggest any remedy beyond what he proposed to be applied to the Statute Law.

Shortly after the delivery of this speech a deputation from the Law Amendment Society, which I joined by invitation, waited upon Lord Westbury, at Westminster, for the purpose of soliciting his Lordship to obtain the assistance of Government in establishing a set of Law Reports, which should be authentic—referring his Lordship to the Report of 1853—Lord Westbury regretted his inability to interfere, and humourously reminded the deputation of the fable of the Waggoner appealing to Jupiter to help him to get his waggon out of the ruts, and added, reporting is a privilege of the Bar, and the Bar must devise whatever remedy is required.

The paper of the 18th of May was thus left to work its way; and it did so in the manner which will appear in the second division of this History.

SECOND DIVISION.

The steps taken after the 18th of May, 1863, and up to the 2nd of December, 1863, the day on which the first meeting of the Bar was held.

THE circulation of the paper of the 18th of May, 1863, among the Bar at Lincoln's Inn produced in a very short time results far beyond my most sanguine expectations. I received expressions of approval from members of the Inner Bar, the rising juniors of the outer Bar, and all the leading Conveyancers, among whom I would especially mention the late Vice-Chancellor, Sir Charles Hall, and among the then rising juniors of the outer Bar I would mention the present Lord Justice Lindley. Mr. Lindley, as I must then call him, took the trouble to prepare and send me a scheme for a set of Reports which he authorized me to make whatever use of I pleased, and I did so, as will hereafter appear, I also ascertained that my suggestions were favourably regarded by all the Equity Judges sitting in Lincoln's Inn,—the Lords Justices Knight Bruce and Turner, and the Vice-Chancellors Kindersley, Stuart, and Wood (afterwards Lord Hatherley). Under these circumstances I felt myself bound to consider how I could turn to the best account the encouragement thus unexpectedly given to my crude suggestions. And it occurred to me to apply to the then Solicitor-General, Sir Roundell Palmer, as the acknowledged leader, the *facile princeps*, of the Equity Bar, for his consent to allow me to address a letter to him in that character, in which I might deal with the evils of Law Reporting generally, and foreshadow my notions of a remedy. Sir Roundell kindly gave me his consent, but without in any manner lending the authority of his sanction or approval to the contents of any letter I might write. Thus authorized I prepared and published on the 12th of September, 1863, a letter addressed to Sir Roundell Palmer, accompanied by a print, with Mr. Lindley's consent, of his paper before referred to. That letter and paper I here reprint as evidence of the first fruits of professional opinion uninfluenced by external authority.

A LETTER to SIR ROUNDELL PALMER, KNT., M.P., HER
MAJESTY'S SOLICITOR-GENERAL, on the PRESENT SYSTEM
OF LAW REPORTING, ITS EVILS, AND THE REMEDY. By
W. T. S. DANIEL, Q.C.

SIR,

I propose to address to you, as an acknowledged leader of the Bar, and through you to the Profession at large, and the public generally, some observations upon the present system of Law Reporting,—directed to an exposition of its evils and the causes to which they are attributable, followed by the suggestion of a remedy.

The system of Law Reporting to which my observations are intended to apply, is that which consists in the preparation and publication of those reports of judicial decisions in the Superior Courts of Law and Equity and the Appellate Courts,—which, from the authority attached to them as precedents, constitute, in the language of Sir Matthew Hale, "the formal constituents of the Common Law," and are spoken of by Sir W. Blackstone as "the evidence of the unwritten law."

If there be any value in the observations which I am about to offer,—any advantage to arise from them either to the profession or the public,—it must be looked for in the Remedy which I propose. The evils of the system of Law Reporting, as it has existed for many years and now exists, have been felt and deplored by Judges, by Jurists, and by Lawyers of every grade; the difficulty has always been to provide an efficient remedy. That which I shall venture to propose is *radical*, it will go to the uprooting of the present system, and laying the foundations anew; it may be expected to cause an extensive interference with and a partial subversion of existing interests, and be open to the objection that it is an untried experiment. The fact, however, that the evils to be redressed are grievous, and of long standing,—and, as proved by experience, that the expedients hitherto adopted have not only been unavailing as remedies, but, as regards some of them, have even served to increase the number and intensity of the mischiefs they were intended to remove,—will at least excuse the attempt to start a *new idea* upon the subject, and perhaps tend to allay some of those feelings of distrust and dislike which instinctively arise when Novelty is sought to be applied to the alteration of an existing system.

I propose to consider the subject in these three points of view:—First, What a proper system of Law Reporting ought to be. Second, What our present system is. Third, How the system may be made what it ought to be.

I. What a proper system of Law Reporting ought to be.

The nature and object of Reports of judicial decisions are nowhere better defined and explained than in the preface to Douglas's Reports, from which I extract the following :—

"The immediate province of Courts of Justice is to administer the law in particular cases. But it is equally a branch of their duty, and one of still greater importance to the community, to expound the law they administer upon such principles of argument and construction as may furnish rules which shall govern in all similar or analogous cases.

"Such are the various modifications of which property is susceptible, so boundless the diversity of relations which may arise in civil life, so infinite the possible combination of events and circumstances, that they elude the power of enumeration, and are beyond the reach of human foresight. A moment's reflection, therefore, serves to evince that it will be impossible, by positive and direct legislative authority, specially to provide for every particular case which may happen.

"Hence it has been found expedient to entrust to the wisdom and experience of Judges the power of deducing from the more general propositions of the law such necessary corollaries as shall appear, though not expressed in words, to be within their intent and meaning.

"Deductions thus formed, and established in the adjudication of particular cases, become, in a manner, part of the text of the law. Succeeding Judges receive them as such, and, in general, consider themselves as bound to adhere to them no less strictly than to the express dictates of the Legislature.

"But, whether a certain decision was ever pronounced, and if it was, what were the reasons and principles upon which it was founded, are *matters of fact, to be ascertained and authenticated*, as all other facts are, *by evidence*.

"Whether a particular act was done, or contract entered into by a party to a cause, or not, can only affect him and his opponent, or at most, those who become their representatives; and should that be pronounced to have happened which in truth never did, third persons would not be injured. But upon a judgment alleged to have been delivered, was really delivered, and upon the alleged reasons, may affect all persons who are or shall be in circumstances similar to those of the parties in that cause; yet it has *somehow or other happened that little or no care has been taken, nor any provisions made, to render the evidence of judicial proceedings certain and authentic*.

"The records of the Court are indeed framed in such a manner as to constitute indisputable documents of such parts of the proceedings as are comprised in them, but it is easy to show that this goes but a very little way.

"In the first place, the authority of a decision, for obvious reasons, is held to be next to nothing if it passes *sub silentio*, without argument at the Bar or by the Court; and it is impossible from the record of a judgment to discover whether the case was solemnly decided or not. Records, therefore, even when they contain a sufficient state of the case, do not afford complete evidence of what is requisite to the future authority of the decision.

"But, in the second place, it is well known in how few instances the material parts of the state of the case can be gathered from the record. According to the modern usage, by far the greater number of the important questions agitated in the Courts of Law come before them upon motions for new trials, cases reserved, or summary applications of different sorts. In none of those instances does the record furnish the evidence even of the facts; for which, in

such cases, there is no other repository, nor for the argument and reasoning of the counsel and the Court in any case, but the collections made by Reporters. *On their fidelity and accuracy, therefore, the evidence of a very great part of the Law of England almost entirely depends."*

And I would refer to the same preface for a succinct history of Law Reporting from the earliest times, down to the reign of William III., at which period the system of reporting by private individuals without official or judicial authority may be considered to have commenced.

Our system of jurisprudence being compounded of the written and unwritten law,—the *lex ex scripto*, and the *lex ex non scripto*,—the one to be found in the Acts of the Legislature, the other in the judicial decisions of our Superior Courts of Law and Equity, and Certainty being, in theory at least, an object aimed at in both branches of the law, it would seem to follow, almost as a self-evident proposition, that it is as essential to the interests of the community that the judicial decisions of our Courts,—from which the terms of the unwritten law are to be collected, should be prepared and promulgated with a care and authority not less than those which are bestowed upon the preparation and promulgation of the Acts of the Legislature,—wherein are to be found the provisions of the written law. The proposition is doubtless as true as it is self-evident; the difficulty lies, and has always lain, in determining the manner in which a proper Record or Report of those judicial decisions shall be prepared and promulgated, so as to be at once accurate and authentic,—a difficulty which, after many years of experience, still remains but imperfectly surmounted.

Suppose the question could now be considered as *res integra*, as a matter not to be affected by the short-comings of our practice and experience hitherto, what should we say ought to be the characteristics of a system which proposes to furnish the proper evidence of the unwritten law? May we not take as our guide, to the extent at least to which the two cases are parallel, the characteristics of the system by which the written law is evidenced? If we do this, we find at starting that both are in their nature records,—the one as much as the other,—to be resorted to as evidence of a fact, namely, what the law is. Now, is it not of the very essence of a record, that it be authentic? This characteristic authenticity is universally identified with the acts of the Legislature. The contrary notion involves an absurdity which brings conviction to the mind the moment it is suggested. The *reductio ad absurdum* argument has been facetiously put thus:

"Conceive the absurdity of permitting the suggestion by the claimant of an estate, that there must be *some mistake* in the engrossment of the Statute of Limitations; or a convicted housebreaker contending that the legislature *could*

not have meant that the offence of burglary should be punished with transportation for life."—See "Law Review," vol. vii., p. 234.

Now, the absurdity, though not so striking, is equally great in principle when we suggest a want of authenticity in the reports of judicial decisions, treated as records of the unwritten law. But why is the absurdity not so striking in the one case as in the other? Is not the reason this? That having for so many years,—throughout in fact, the whole period of the individual experience of every living lawyer,—been enured to this want of authenticity in our reports, we have been so accustomed to submit unresistingly to the evil, that we have lost sight, if not of its existence, at least of its origin and cause, and treading without any independent thought or judgment of our own in the beaten track of precedent,—doing as our forefathers did because, *and only because*, they did it,—we have contented ourselves with endeavouring to modify the mischiefs of which we have been sensible, by explanations, and distinctions, and doubtings, now and then by nice balancings, sometimes by absolute contradictions: thus in reality increasing the evils of uncertainty and confusion for the future—parrying the effect instead of striking at the cause—following the disease through its symptoms, not tracing it to its origin—adopting palliatives instead of remedies. The Lord Chancellor, in his recent speech in the House of Lords on the Revision of the Law, speaks of—

"The blunted sensibility of lawyers to the evils with which they have long been familiar."—Macq. Ed., p. 4.

Pursuing the same parallel, the next characteristic in a report should be *singleness or unity*. Two records of the same fact (and what the law is on a given subject, is a fact of which the record, whether Act of Parliament or Report of a Judicial Decision, is the evidence) would be an anomaly. If the two records substantially agree, one is unnecessary—if they materially differ, one must be wrong. It may, however, with some plausibility be said that two different minds might report a judicial decision in two different ways, so that the Judge whose decision it is might not be unwilling to adopt either; and that from the combined labours of different and independent minds you have a better chance of obtaining a more certainly accurate result. This may be theoretically true; but we are dealing with sound theory as applied to the real business of life, and must not be carried away by the allurements of abstract perfection. The question for solution is, whether, if proper means can be taken to secure reasonable accuracy in the preparation of the report, the advantages of Certainty arising from authenticity and singleness will not in the decisive majority of cases outweigh any advantages that would be likely

to arise in a few special cases from adopting the opposite course. Putting out of sight for the moment the evil of expense and the other evils which experience has shewn to be incident to a multiplication of reports, the importance of Certainty should I think decide the question in favour of authenticity and singleness. *Stare decisis* rests for its foundation upon the desire for Certainty in the law, and in the sources from which it is to be drawn. *Misera est servitus ubi jus vagum*. The want of Certainty in the unwritten law of this country is the great defect in our Jurisprudence. It is this which too frequently enlarges the limits and obscures the boundaries of judicial discretion, producing an evil sometimes embarrassing to the Judge, frequently perplexing to the Advocate, and always injurious to the Suitor.

Again, consider the nature of the thing itself. A Report of a judicial decision may be likened to a Portrait; it is, or ought to be, a truthful representation of a matter of fact. There may, no doubt, be different degrees of skill exhibited in the preparation of the picture; it is not, however, a work of imagination: a Report affords no scope for displaying the arts of rhetoric; it ought to be a condensed but correct statement, *so far as necessary to elucidate the point decided*, of the issues of fact and law, the material allegations necessary to raise the one and the other, the arguments on each side, and the grounds and reasons of the judgment. This duty requires skill, learning, and experience for its proper performance; but, once properly performed, the nature of the thing precludes the necessity for repetition. Any difference that may be introduced into the simple elements of which a Report should be thus compounded can only lead to confusion and uncertainty, and therefore ought to be rejected.

The next characteristic of a Report is Accuracy, by which I don't mean ideal, absolute accuracy, nor that degree of accuracy which would not admit of shades of difference. I don't mean the accuracy of a photograph—we are not in search of abstract perfection—I mean that degree of accuracy which satisfies the judgment of a skilled and experienced mind specially charged with the duty of determining what is sufficient. Upon this question of accuracy the parallel between Acts of Parliament and Reports ceases to apply. In the case of Acts of Parliament, accuracy is obtained by what may be termed mechanical correctness—the ordinary care of the copyist and compositor, checked by examination. To obtain the accuracy essential to a Report, we must resort to means more exposed to the chances of error—we require a combination of skill, learning, and experience specially qualified for and directed to the labour of its preparation. But fortunately for the public there is no lack of means for securing this requisite combination. The ranks of the Bar supply in abundance the means for obtaining the essential accuracy required, as certainly and efficiently,

morally speaking, as copyists and compositors are able by their labours to secure the accuracy of Acts of Parliament.

These three qualities of Authenticity, Singleness, and Accuracy are those characteristics of Reports which theory and principle would point out as essential; and in so far as any of these qualities are wanting or defective, the public interest may be presumed to suffer. It will at once be perceived that, of the three qualities thus spoken of, Accuracy is the most important; unless this can be secured to that reasonable extent which I have endeavoured to describe, the other two would be worse than useless—they would involve evils more serious than any of which we now complain.

In addition, however, to the three qualities just spoken of, there are two others of a more practical character, but still essential,—namely, Speedy Publication and Reasonable Cost. A report that is authentic and accurate, and to be accepted as the only standard of authority, should be published without any greater delay than is necessary to ensure its reasonable accuracy. An Act of Parliament may be published as soon as it can be copied and printed—not so a Report; some time is absolutely necessary for its proper preparation, but the time requisite for that purpose ought not, in the interest of the public, to be exceeded. Why should it? What have private interest, private convenience, or private considerations of any kind to do with the question? The matter concerns the public interest; and if this were once placed upon a proper footing and under proper regulations, in which the public interest was made the primary object, we should no more hear of private reasons affecting the publication of reports than we should hear of private occupations or amusements interfering with the attendance of a Registrar or the public sittings of a Judge!

The last point is, Publication at Reasonable Cost. The public, who are bound by the law and must purchase in order that they may know it, and particularly all legal practitioners, are entitled not only to have it promulgated with all due *déspatch*, but also to have it supplied to them at no greater cost than is involved in fair and liberal payment for the skill, labour, and expense incurred in its preparation and publication. The demand for the Reports is created chiefly by the necessity for their use; and after liberal remuneration to those who prepare them, those whose occupation and position oblige them to buy ought not to have the burden of their necessities increased by the exaction of any profits not properly connected with the preparation and the sale. I shall have to deal with this question of cost or price more at large and in a more directly practical shape hereafter; I content myself at this stage with enunciating the principle upon which I shall contend that cost should be calculated—a principle which will be found to base itself upon the exclusion of all commercial or trade profit.

So much for the first division of the subject. The points I insist upon are :—That the proper preparation and publication of the Reports of judicial decisions which are to be accepted as authority, are matter of Public Concern ; and that such reports ought to possess these five characteristics :—1. They should be authentic ; 2. There should be only one standard of reference ; 3. Proper means should be adopted for insuring reasonable accuracy ; 4. They should be published with due expedition ; and, 5, At a reasonable price.

II. I proceed to consider, in the *second* place, What our present system is ; and in so doing shall view it as at present compounded of Privilege and Competition, tracing the growth and progress of Competition, pointing out the evils that have arisen in consequence, stating some of the expedients that have from time to time been suggested as remedies, and considering the causes to which those evils may be traced.

Our present system of Law Reporting, if system it can be called, is founded upon the notion that Law Reporting is the proper subject of Commercial Enterprise, and may be conducted upon the economic principles of Free Trade, fettered, however, with one restraint, but with one only,—namely, that the manufactured article be prepared by a *privileged* class ;—that the Report be prepared and published under the name of a Barrister. With this single restraint, the market for Reports is now as open as the most devoted follower of Adam Smith could desire. Any one who thinks he can make a trade profit out of Law Reporting, whether by underselling his rivals, underpaying his labourers, or any other device which commercial skill can invent to secure an advantage in the struggle for gain, may start a Set of Reports ; and, from what seems at length to have become, with scarcely an exception, the settled practice of the Courts in permitting the citation of reports having the names of barristers appended, establish himself as the Purveyor of an Article which the Judges must accept and the Public be bound by as evidence of the unwritten law. The Lord Chancellor, in his speech on the Revision of the Law, before referred to, thus describes the present state of Law Reporting :—

"The reports are published without any judicial control or sanction, nor is there any provision to ensure correctness or security against error, but as soon as a report is published of any case *with the name of a barrister annexed to it*, the report is accredited, and may be cited as an authority before any tribunal."—Macq. Ed., p. 9.

As a consequence of this perfect freedom in the trade of reporting, what is the result which the profession and the public now witness, and the burden of which they are compelled to endure ? There are at present Six separate and distinct sets of publications, each professing to be a complete and sufficient witness of the unwritten law, and each

of which is citable and cited in our Courts as authority. Familiarly speaking, these reports are divided into two classes, and distinguished as the Regular or Authorized reports—the reputed children of Privilege,—and the Irregular or Unauthorized reports—the acknowledged offspring of Competition. This nomenclature has however become singularly inaccurate. The regular Reports are published at most irregular intervals, according to the private convenience of the reporter, sometimes with a discontinuance of the set, destroying the continuity of the series. The irregular Reports, on the other hand, are published most regularly—regularity of publication being essential to their commercial success. The unauthorized Reports have become almost the only authority which practitioners in our Courts have at hand or care to cite, and the authorized Reports are left with little more of the advantage of authority than consists in a name.

But, preserving the name, though the substance may have changed, the regular or authorized Reports now consist of the following sets:—

1. The House of Lords Cases (other than Scotch appeals) by Clark.
2. Scotch Appeals, by Macqueen.
3. The Privy Council Cases, by Moore.
4. The Appeal Courts of the Court of Chancery, comprising The Lord Chancellor and the Lords Justices, and cases in Chancery, Lunacy, and Bankruptcy, by De Gex and Jones.
5. The Rolls, by Beavan.
6. V.-C. Kindersley, by Drewry and Smale.
7. V.-C. Stuart, by Giffard.
8. V.-C. Wood, by Hemming and Miller.
9. The Queen's Bench, by Best & Smith.
10. The Common Bench, by Scott.
11. The Exchequer, by Hurlstone and Norman.
12. Bail Court and Practice Cases, by Lowndes and Maxwell.
13. Probate and Divorce Court, by Swaby and Tristram.
14. New Admiralty Reports, by Lushington.
15. Crown Cases Reserved, by Leigh and Cave.
16. Registration Cases, by Keene and Grant.

These sixteen different publications, the property of several different persons, and consequently under as many different managements, comprise together the body of Reports which, under the name of Regular or authorized, contain or purport to contain, those decisions of our Superior Courts of Law and Equity and the Appellate Courts, which ought to be the evidence of the unwritten law. And, *prima facie*, one would say there is no apparent deficiency in their range: there does not appear to be any part of the proper area of judicial decision left unoccupied. Now, if these Reports could be consolidated and made one, in such a manner as to answer the requirements of the profession and the public, in the matter of their preparation, the period

and punctuality of publication, and their cost, do not the instincts of common sense tell us it would be desirable? These regular Reports, however, have been and are great wrongdoers to the public; or rather, they disavow all obligation of duty to the public; and, therefore, can urge no especial claim to favour. Brought into existence and sustained by the motives which animate commercial enterprise, they look primarily, if not exclusively, to what they deem to be their own interest—their pecuniary interest—their profit. The public interest is not their concern nor the object of their care. Are they blameable for this? Remember the public guarantees them nothing,—neither profit, nor protection, nor privilege; they owe the public nothing; they are left exposed to all the consequences of Trade Competition. They must protect themselves as best they can. Reduced circulation, caused by competition, perpetuates high prices and leads to their increase. Laudable attempts to reduce the price, founded upon the hope of increased circulation, have been made, more than once, and failed. Promises of more speedy and regular publication have been made in good faith; the promise has been proved by experience to be incapable of complete performance. Spasmodic efforts at speedy publication are sometimes made; but a state of spasm is not a state of health! When the publisher and the reporter are different persons, the system of payment by length and quantity too generally prevails. This holds out a strong temptation to prolixity, tending to deteriorate the character of the Report; increasing the burden to the public by increased price for worthless matter. The publisher, on the other hand, is in the hands of the reporter as to supply of the manuscript. The reporter's other engagements may interfere with its preparation; by the allurements of professional success, he may even be tempted to halt in or suspend his labours; or the accident of death may terminate them; and the publisher has no power over the manuscript. Hence delays and interruptions in the publication, and gaps in the series, giving an impetus to competition. The instances which justify these remarks are familiar; several may be found in any Law Catalogue. Their citation is unnecessary, and might suggest the idea that a reflection on individuals was implied, than which nothing is further from my intention. I desire only to point out the evils and defects of the system, with a view to its amendment. Where, as in some cases, the publication is at the risk of the reporter, the temptations to prolixity and delay of course do not exist—the very opposite incentives are brought into play. But here, the evils of Competition are felt in their fullest intensity:—reduced circulation forbids any attempt at reduced price;—the incubus of trade profit, in the shape of discounts, has the effect of sweeping away 35 per cent., or more, of the gross proceeds, leaving not more than 65 per cent. to bear the burden of the entire cost: the

balance is the profit. This balance necessarily varies, but is always directly affected by the amount of circulation. In no case of this class that now exists will it, I believe, be found that the profit to the reporter amounts to anything that can be considered a fair remuneration for his professional skill and labour. And inadequate as this remuneration is, it is continually exposed to the risk of further reduction, arising from diminished circulation; an evil constantly threatened by competition, and against which no amount of skill, labour, or industry will enable the Reporter successfully to struggle. Here again I could verify my statements by figures with which I have been favoured, but I think it unnecessary, and therefore undesirable to do so; the material facts are familiar to my professional brethren. I am aware that the regular or authorized reporters in the House of Lords and the Privy Council are appointed at salaries; but I believe I shall be justified in the opinion, that advantage would result to the public from making those Reports part of one general system founded upon unity and authenticity, increasing at the same time the responsibility and usefulness of the office, and providing an increased remuneration and a more satisfactory mode of payment for services so valuable.

The evils of the regular or authorized Reports, as they form part of the present system of Law Reporting, may be thus summed up:—

1. Enormous expense.
2. Prolixity.
3. Delay and irregularity in publication.
4. Imperfection as a record, for want of continuity.

To these I will add, further, an evil not, like the others, inherent in the system, but occasioned by the nature of the competition to which the regular Reports are exposed,—which, however, has become a serious evil,—namely, that of reporting cases indiscriminately and without reference to their fitness or usefulness as precedents, merely because, having been reported by rivals, the omission of them might prejudice circulation, and consequently diminish profit.

I come now to consider the Reports termed Irregular or Unauthorized. Those at present in existence are—

1. "The Law Journal," established in 1822.
2. "The Jurist," established in 1837.
3. "The Law Times," established in 1843.
4. "The Weekly Reporter," established in 1852, united in 1856 with "The Solicitors' Journal," then established.
5. "The New Reports," established in November, 1862.

In addition to these, the following have been established and discontinued:—In 1829 an attempt was made by Mr. Tamlyn to report decisions at the Rolls, in opposition to the regular reports of Russell

and Mylne; but these were discontinued the following year. In the same year, 1830, "The Legal Observer" was established, and continued until December, 1855; its place was filled up, in January, 1856, by "The Solicitors' Journal." In 1835 reports of decisions in the several Courts of Common Law (which acquired the name of the Omnibus Reports) were started, and continued until 1840, when they suddenly ceased, *leaving the current volume in each Court incomplete*. In 1848, Reports of Decisions in the Lord Chancellor's Court were started in the names of Hall and Twells, in opposition to these of Macnaghten and Gordon, but discontinued in 1849. And in 1853, reports called "The Law and Equity Reports," being decisions, as their name imported, in all the Superior Courts of Common Law and Chancery, were started, but discontinued the following year. All these attempts were the profitless speculations of Competition. They have left, however, an evil behind them, in this—that the case-hunting spirit may succeed in finding in them some case not to be found elsewhere, and which, by its citation, may unsettle more recent decisions; and thus, though cast out from our Libraries, they serve to supply latent elements of confusion.

Each of the five existing sets of these Irregular Reports purports to be a complete collection of all the decisions in our Superior Courts of Law and Equity and Appellate Courts, and each is allowed to be cited as authority in all the Courts without any substantial difference.

It is not unworthy of remark, that some of these publications in their outset disclaimed the intention of being what they have since become—rivals of the regular Reports; and aimed only at the object of conveying to the profession and the public information as to the proceedings in Courts of Justices more accurately than could be expected from general newspapers, and more speedily than could be obtained from the regular Reports. Thus, "The Law Journal," the first and most formidable of all these rivals, in its preliminary announcement,—vol. i., p. 2,—with reference to Law Reports, states as follows :—

"In presenting the profession with a new set of Reports of the cases decided in the Courts of Equity and Law, it is the most anxious wish of the proprietor that the present publication should not be considered as in any manner interfering with the more elaborate labours of Mr. Jacob and Mr. Walker, or their successors in the Court of Chancery; Mr. Barnewall and Mr. Alderson in the Court of King's Bench, or with those of Mr. Broderip and Mr. Bingham in the Court of Common Pleas. *A comparison of the different manner of giving the reports will immediately remove all suspicion of any opposition being intended to the labours of those learned and accurate Reporters.*

In accordance with this design, "The Law Journal" was at first a

weekly publication, furnishing, among other information connected with the profession, reports in a form useful for general practitioners—not affecting to give them the aspect of authority. This mode of publication was continued until 1830, when a new series commenced; and then commenced competition with the regular Reports. The names of the Barristers furnishing the report were given, the parts were published monthly instead of weekly, and the form and character of a newspaper publication were abandoned. "The Law Journal" has ever since maintained a prosperous career, and at the present time no doubt possesses a much larger circulation than any one—perhaps than any three or more—of the so-called regular Reports. The state of the regular Reports at the time—their costliness, the delay and irregularities in the publication, the entire absence of anything like unity in their system of publication and management, and the too little regard given to the consideration of what the real interests of the profession and the public required, were probably the causes which led to this change in the character of "The Law Journal," and have since contributed to its success.

But although it must be admitted that "The Law Journal" has done service to the public, by correcting some of the evils which attended the system of the regular Reports, yet it must be observed that the example set by this publication was the beginning, and from the year 1830 must be dated the commencement, of that unrestricted competition, which has since had so many followers, and has culminated in the number which now oppresses the profession.

In the same year, 1830, "The Legal Observer" was established, following in the wake of "The Law Journal," as a competitor with the regular reports, but adopting, what had been abandoned by that Journal, the character of a weekly publication. In the preface to the first volume of "The Legal Observer," the Editor, in giving a summary of the year's labour, says:—

"We have given a series of original reports in all the Courts of Law and Equity, which will supply the place of the more expensive Law Reports, *particularly as we have been able to give reports of the decisions of Courts of which there is at present no other report.*"

The successful examples of "The Law Journal" and "The Legal Observer" after a time brought another rival into the field. In the year 1837 "The Jurist" was established, competing with "The Legal Observer" as a weekly publication, and with that and "The Law Journal" as another rival of the regular Reports. In the first number of "The Jurist" (14th January, 1837), this announcement is made:—

"The decisions of the Courts of Chancery and of Common Law will be reported by Barristers, and in this part of the work an attempt will be made to attain the correctness of the usual reports, without their prolixity."

The Newspaper character which had originally belonged to and had been afterwards abandoned by "The Law Journal," had not been entirely adopted either by "The Legal Observer" or "The Jurist;" and though both were weekly publications, and both gave professional information in the nature of news to a certain limited extent, each professed to have higher aims—"The Legal Observer" was more antiquarian and cosmopolitan, and "The Jurist" more scientific and didactic. In this state of things there appeared to be a place in the field of competition not fully occupied, and, in the year 1843, "The Law Times" was established as a weekly *Law Newspaper*; and in the preface to the first number, this announcement is made with reference to reporting:—

"We have been much perplexed how to deal with the Reports. It would be manifestly impracticable within the limits allowed by other intelligence to present anything like a full report of all the Courts. And indeed *this work is so well done by publications that very properly devote themselves almost wholly to it, that it would be folly to attempt to rival or supersede them.*"

This view, however, was not long maintained; the probable advantages of rivalry, through the now established system of self-appointed reporters, appears soon to have removed the notion that *the attempt would be folly*, for in the sixth number of "The Law Times," we find, under the head "The Reports," this announcement:—

The following are the names of gentlemen who *favour* "The Law Times" with the reports,"—

enumerating the reporters. By this step, "The Law Times," equally with "The Law Journal," "The Legal Observer," and "The Jurist," became a competitor with the regular Reports. With these four competitors in the struggle to supersede the regular Reports, and each endeavouring to rival and supersede the others, it will not be matter of surprise that the evils to the profession and the public, arising from crude and hasty reporting,—and (be it said with all respect) from the imperfect performances of inexperienced and underpaid reporters, from the uncertainty, inconsistency, and confusion produced by numbers, and withal from the increased expense to the practitioner,—should at length arouse the attention of the profession.

Accordingly, we find that in the year 1848, the subject of the system of Law Reporting was discussed in two articles published in "The Law Review" and "The Law Magazine" for that year (7 *Law Review*, p. 223, and 40 *Law Magazine*, O. S., p. 1); to those articles I beg to refer. They will repay the trouble of re-perusal, and fully justify all the strictures I venture to pass upon the present system; they dilate as well upon the enormous evils attendant upon the regular

Reports as those introduced by their competing rivals. The result of the attention thus drawn to the question was, that the subject was taken up by the Law Amendment Society (which has the honour, Sir, to number you among its influential members), and a committee appointed, who, in 1849, made an elaborate report, which was extensively circulated, and published in "The Law Review" for 1849, vol. 10, p. 395. To this Report I also beg to refer, as embodying the opinions—condemnatory of the system as it then existed—of persons whose opinions are entitled to respect, if only upon this ground, that those who wear the shoe can best tell how and where it pinches! The Report enlarges upon the evils of delay, of expense, of prolixity, of irregularity, of competition. Against competition the Report especially inveighs:—

"Competition, ordinarily productive of so much good, in this instance adds to the evil. . . . It has long been considered a practicable scheme for any barrister and bookseller who unite together with a view to notoriety or profit, to add to the existing list of Law Reports. . . . Wherever there is the smallest opening, the profitable trade of Law Bookselling establishes a fresh series of Reports. . . . The competition of the reporting system is thus carried on without regard to the interests of the profession or public. . . . To sum up in a few words," say the Committee, "the evils and inconveniences of the existing system of Law Reporting, there is no guarantee afforded to the public that the judicial exposition of the law will be reported at all, or reported correctly, or in such a manner with respect to conciseness, form, and price, as to be accessible to those whom it so vitally affects."

This Report, although valuable as the expression of professional opinion upon the system as it then existed, failed to suggest any practical remedy; it however adverted to this important fact:—

"That the present voluntary outlay of labour, skill, and money on the part of the legal profession, in the shape of Law Reports, are *amply sufficient to secure, under a systematic direction, all that could be desired in the shape of an authentic series of Reports, to be produced regularly, expeditiously, and cheaply.*"

No efficient remedy having been suggested, the admitted evils were left unredressed. The result was what might be expected—the appearance in the field of another candidate for a share in the prize of commercial profit. In Michaelmas Term, 1852, "The Weekly Reporter" was established, limited, as its name indicated, to reporting only, and disclaiming all such general objects as had been embraced by "The Legal Observer," "The Jurist," and "The Law Times,"—thus challenging competition generally, not only with the regular Reports and their existing rivals, but also with "The Law Journal" especially, matching its rivalry with that journal by a weekly instead of a monthly publication. In the preface to the first volume of "The Weekly Reporter," dated Trinity Vacation, 1853,—after speaking

with satisfaction of the result of their labours for the first legal year, and observing that many who were at first startled by the *novelty* and *magnitude* of the scheme, and the difficulties which it appeared to involve, had now been convinced both of its practicability and advantageous character,—the editors proceed to say—

"They are happy to state that they have *found throughout the profession* a deep and anxious interest in the success of this publication, no less on account of the merits which may be fairly claimed for it than from *its appearance forming a new era in the history of Law Reporting in this country*. The *expense* and the *delay* of the publications in which the decisions of the Superior Courts are reported are generally felt to form a very serious evil, and to be quite out of keeping with the economy and dispatch which are found to prevail in all matters where useful knowledge or serious business are concerned at the present day. *There may be some who prefer the dilatory process and the exorbitant prices of the old Reports to the cheaper and quicker system* which is now commanded by the exigencies of the times. But the matter is no longer a question of taste; and every practitioner feels that the *delay and expense which have hitherto prevailed in the publication of the decisions of the Superior Courts are incompatible with the present state of the profession, and must if possible be brought to an end*. To remedy these evils by *introducing a new system*, which should prove to the profession that a *different mode of reporting was at least practicable, and might be made as useful as the old, was the object of the projectors of this publication*."

And after speaking of difficulties surmounted, and promising that the reports in the next volume should be still more perfect and complete, and should still more *satisfy the wants of the profession* in this most important department of legal literature, they proceed—

"Meanwhile, the present volume will speak for itself, and will be of the highest utility in presenting *in a cheap and accessible form reports of all important cases that have been decided in the Courts of Law and Equity during the past legal year*."

I have extracted from this preface at some length, and recommend the whole to the perusal of my professional brethren, for the purpose of suggesting the reflection whether the self-seeking spirit of commercial adventure, too freely indulged in, may not have a tendency to dull that nice sense of truth and honour which ought to characterise every act of a barrister done by him in the exercise of his professional privileges,—of which reporting is one,—privileges which belong to him not as an individual, but as a member of an institution, and which rest for their best if not only foundation upon this, that they exist and are to be exercised for the public good. "The Weekly Reporter" contains a very useful and carefully compiled Table of the Names reported in the volume, with a reference to the report of the same case *in contemporaneous reports*. A reference to this table in the volume, from the preface to which I have largely extracted, will show how

shallow is the pretence to the claim thereby set up to novelty, expedition, and cheapness, as compared with the Reports which it proposes to supersede!

Take the following instances from the first page:—

In Chancery.

Barrington v. Liddell, under the column headed "Reference to Contemporaneous Reports," we find this case reported:—

"*Barrington v. Liddell* :—2 De Gex, Macnaghten, and Gordon, 480.
22 Law Journal, Ch. 1.
17 Jurist, 241.
20 Law Times, 133."

The next case—

"*Bartley v. Bartley* :—1 Drewry, 233.
22 Law Journal, Ch. 47.
16 Jurist, 1062.
20 Law Times, 140."

Scores of instances of a similar character may be seen on reference to the lists both of the cases in Chancery and cases of Common Law in the same volume.

Where, it must be asked, is the ground for the assumption of superiority over the other Reports either in expedition, novelty, or cheapness? This list of cases furnishes abundant evidence that the regular Reports, as well as their eager rivals, are running a neck-and-neck race for public favour; and that the result is nearly a dead-heat, at least as regards speedy publication. Hare, Drewry, and De Gex, Q. B. Reports, C. B. Reports, and Exchequer Reports, among the regulars, are published side by side with their rivals,—“The Law Journal,” “Jurist,” “Law Times,” and “Weekly Reporter.” Surely this petty tradesmen-like propensity to puffing is as inglorious to the profession as the system which induces it is injurious to the public!

But what, it may now be asked, was the effect at the time of this increased competition, created by “The Weekly Reporter,” upon the interests of the public and profession, and especially upon those whose opinions had been strongly though ineffectually expressed in 1848 and 1849? Just what might have been expected. The sufferers were again on the alert, but again, unfortunately, a difference arose as to the Remedy. Some of the regular Reports in the Court of Chancery were announced for publication at greatly reduced prices and at early periods, in the hope of inducing an increase in the number of subscribers. This, however, was the isolated effort of individuals, and comprised some only, and those a very few, of the regular Reports; and it entirely failed. As a consequence, high prices were obliged to

be again resorted to, or rather, were never departed from. Mr. Hare, towards the close of his useful career as a Reporter, propounded a scheme for the formation of a Society, to be called the Juridical Society, for the publication of the Reports, to be established by Royal Charter, and managed by a Council of Supervision, who should have the appointment of the Reporters; but the proposal did not meet with favour. It did not assume any phase of authority; it would have been a mere voluntary association of subscribers; and it did not, I believe, go beyond printing the prospectus and preparing the draft charter. The Law Amendment Society took the matter again into their consideration, and referred it to another Committee, who, by a Report published in 1853, after confirming the views and opinions expressed in the Report of 1849, and adding various reasons of their own, showing the importance to the public of establishing a proper system of reporting, and the means which, if properly combined, exist for the purpose,—express themselves thus:—

"To effect a combined action on the part of the large number of gentlemen at present engaged in Law Reporting; to prevent a variety of printed versions of the same case; to make the books of Reports contain all judicial decisions by which the future administration of justice is affected, and those only; to avoid mere book-making, and insure at once expedition, accuracy, completeness and cheapness in the Reports, has long been a desideratum in the profession; and of late years various plans have been proposed in order to attain it."

"The plan of a voluntary association has been suggested amongst the Reporters and those who professionally use the Reports; and it has been urged, that inasmuch as the profession of the law comprises at once those who frame the Reports and those who use them—in fact the producers and consumers—its members are directly concerned in the success of such an association, and ought to establish it without adventitious aid. But when the difficulties are considered of inducing a sufficient number of individuals to act in unison, and gratuitously incur the responsibility of so comprehensive an undertaking, and how many conflicting interests would then have to be dealt with, your Committee have arrived at the conclusion that nothing short of an authorized Board, invested with the power of superintending the Reports in our several Courts, and regulating the time, mode, and expense of publication, will effectually cure the evils now so loudly complained of. A voluntary Society, consisting of a less number than 5000 subscribers, would not be able to publish Reports at such a cost as effectually to destroy competition, and the result of the attempt would possibly be to add merely to the existing evils caused by rival series of contemporaneous Reporters, and even were the majority of the present Reporters to join such a Society, the series of Reports hitherto conducted by them might still be conducted by other hands. Were a competent Board, however, invested with the power of officially publishing the Reports at a small price *out of a fund placed at their disposal*, there would be no difficulty, it is apprehended, in inducing the best of the present Reporters to concur; for an arrangement could thus easily be effected for making their remuneration at least equal to that which they at present receive, and affording them material advantages in other respects;

and the cost to subscribers could at once be fixed at such a sum as to effectually destroy competition, and not only to secure the adherence of all those who at present annually pay for the Reports, but of a large number of other parties who are now precluded on the score of economy from doing so."

The Report then contains these suggestions :—

"That a permanent Board, composed of Commissioners, should be appointed *by the Crown*, for the purpose of supervising and editing the Reports of judicial decisions. That the Board should, subject to the sanction of the presiding Judges in their respective Courts, select a sufficient number of competent Reporters for each of the Superior Courts, to rank and be remunerated according to seniority of appointment; and that the cases collected from time to time by such authorized Reporters should be printed and published by the Board at regular intervals as soon as practicable after the decisions are pronounced. That an office should be provided, to which all Reports of cases should be sent in order to be submitted to the Board; and after the Reports are printed they would be sold by the Board at the smallest practicable rate to the public—a sufficient number of the Reports being supplied gratis to any Assize Court and any Local Court in the Country, for official reference. That *Government should advance a sufficient sum to the Board in the first instance*, to meet the expenses; and out of the funds collected by the Board by the sale of the Reports should be paid the salaries of the Reporters and the general expenses, and the remainder applied in repaying whatever had been intrusted to them by the Government. And at the end of each year a debtor and creditor account should be made out and submitted to the Treasury, showing the various items of expenditure, and showing the receipts of the Board in the execution of their trust; the Treasury having power to certify that the charge for copies of the Reports ought to be reduced in case any considerable surplus remained after paying all expenses of the Board, and of preparing, printing and publishing the Reports."

This elaborate scheme did not find sufficient favour with the profession or the public, to be taken up by authority. I have given its details at length, in order that the difficulties in providing a remedy may be the better judged of. The objections to the scheme, apart from the vagueness of some of its details, appear to me to be, that it rested upon Government influence, Government patronage, and the advance by way of loan of public money of an undefined amount upon the security of an experiment—the money to be expended, and experiment conducted by persons who must have been under a very indirect responsibility.

A further proposal was, I believe, about the same period made to the then Lord Chancellor (Lord Cranworth) by certain of the regular Reporters, to inaugurate a new system in the publication of the Equity Reports, which should ensure greater expedition, regularity, and cheapness, to be assisted by an advance out of the Suitors' Fund; but this proposal, for want of support, fell to the ground. Other proposals may have been made, of which I have not obtained information; if there were any such, certain it is, they never succeeded. Private

enterprise, individual exertion, voluntary association, Government interference founded upon an advance of public money, the influence of the Great Seal, were all suggested, and some attempted,—without effect; and the public and the profession were left without remedy in the matter.

After the failure of all these several attempts, there broke out a gleam, but only a gleam, of hope from a most unexpected quarter,—namely, from one of those who were engaged in this race of competition. In "The Jurist" for November 11, 1854, vol. xviii., part ii., p. 430, the Editor, in a leading article, after directing attention to the prejudice the law was suffering as a science from the state of our Statute Law and Reports, and the almost hopelessness of any real amendment, speaks thus of reporting:—

"But the great evil is in the reporting system: and, especially now that the fusion of Law with Equity has commenced in earnest, there is no hope that any lawyer will be able to master his business until two things have been done—first, the purification and abridgment of the existing Reports by authority; and, secondly, *the establishment of an authorized staff of reporters for the future.* If such a reform were suggested on a sound basis "*The Jurist*" would gladly retire and seek some new form of existence."

This reform on a sound basis has, however, never yet come, and "The Jurist" still continues the same form of existence, unwittingly adding its quota to the evils thus deprecated in its columns! Encouraged, as it would seem, by the sign thus held out by "The Jurist," "The Law Magazine," in an article published in May, 1855, vol. liii., p. 292, endeavoured to revive professional energy upon the subject, and proposed a remedy, *limited however to the Common Law Courts.* The proposal is thus stated:—

"That an Act of Parliament should be passed for the regulation of the Reports; that a staff of competent Reporters should be appointed by and be under the control of a certain number of the leading members of the Bar; that the Reports should be considered authentic by the Courts, and that no reference should be allowed in argument to any other Report; that the decisions of the three Courts should be published in a consolidated form; that they should be issued to the public within as short a period as is consistent with accuracy, and that the charge to the subscribers should not be larger than would be found adequate to support the expenses of the work."

And the reviewer urges the following, among other reasons, in support of his proposal:

"The Reporters are not their own masters, and cannot individually, or as a body, without extraneous assistance, reform the system. The booksellers are not to blame for looking to their own interest; *the Bar have the remedy in their own hands by applying to the Legislature upon the subject.*"

At the time this article was written, there was a notice before Parliament by Mr. W. Ewart, M.P. for Dumfries, of a motion for the appointment of a Select Committee of the House of Commons, to inquire into the expediency of appointing authorized Reporters in our Courts of Law; but the motion was never made, and the scheme last proposed for the appointment of Reporters for the Common Law Courts by the Bar, under the sanction of an Act of Parliament, fell to the ground, and was heard of no more. The subject, nevertheless, lost none of its interest with those who felt its importance and were anxious for amendment.

In the inaugural address of The Right Honourable Joseph Napier (then Lord Chancellor of Ireland) as President of the Section of Jurisprudence, read by Earl Russell to the Association for the Promotion of Social Science, at their meeting held at Liverpool in October, 1858,—in enumerating various matters in which the law was defective and amendment called for, Mr. Napier thus expresses himself with reference to the system of Law Reporting :—

"How is our code of judicial decisions to be maintained as part of a binding system of law, if those decisions be not *authenticated, reported by responsible officers, and published under responsible authority*? . . . The suit between A. B. and C. D. involves a decision in which the public is a party deeply interested. But there is no public provision made for an authentic Report of such a decision, or that it should be dealt with otherwise than as the private litigant, the casual, perhaps incompetent, reporter, or the speculating publisher may secure."—*Transactions of the Social Science Association for 1858.*

I will produce only one other witness to the evils of the present system of Reporting, and one other suggestion of a remedy. Mr. George Sweet, the learned and indefatigable Editor of the last edition of Jarman and Bythewood's "Conveyancing,"—and who, from his position and experience, is an authority very worthy of attention,—in a paper read by him before the Juridical Society on the 10th of February, 1862, "Upon the Expediency of Digesting the Precedents of the Common Law, and Regulating the Publication of Reports," upon the latter subject says :—

"Reporting is now uncontrolled. There are five competing series in the Superior Courts" (adding in a note, A sixth series of Reports in all the Courts has been announced) "each of which by reason of *competition*, and it must be added, of the *badness of the article*, barely affords a *scanty remuneration to the reporters and the publishers*. The reports are dear, and the expense is most felt by those who have most leisure to study them; they are diffuse, so that the material points are overlaid; and they contain cases which ought never to be reported,—wasting time, filling shelves, and incumbering the law with a multiplicity of useless details. It may be difficult to find a remedy for *this plague of Reports*. Competition and privilege have been tried at different times, and neither has given satisfaction. The sole fruit of Lord Bacon's attempt to reform

the system of reporting, was the appointment of Hetley; and Hetley's Reports are not valued. It is, however, by *no means clear that reporting is a proper subject for competition*. It is only *by the liberality of the Judges* that notes of cases taken by *self-appointed* reporters are allowed to be cited. The end sought being an authentic record, it seems that a responsible officer should be appointed to keep the record."

He then proposes:—

"That a Chief Reporter should be appointed for each Court, with a liberal salary and two or more salaried assistants to take notes in Court; the duty of the Chief Reporter being mainly to determine what cases should be published, to revise the Reports, and to see that his assistants perform their duty. I need not say that the Reporters should be wholly independent of the Judges, and that they should remain in office during good behaviour. *A fund sufficient to defray the expenses of the establishment might be raised by sale of the Reports.* The sale of the King's Bench Reports at one period exceeded 3000 copies. The publishers printed 4000 copies, and paid the Reporters at the rate of nearly *three guineas for every page*. Since that time, the sale of some of the regular Reports has dwindled, as I am informed, to 300 copies."—Jurid. Soc. Papers, vol. ii., p. 583.

The sixth plague, whose coming was heralded by Mr. Sweet, in due time made its appearance. On the 15th November, 1862, the first number of "The New Reports" was published, with an array of names, as Editors and Reporters, which certainly furnishes abundant evidence, that if ever Law Reporting should be put upon a proper footing, the public interest would be in no danger of suffering for want of members of the Bar able and willing to render the necessary service. I believe none of its earlier rivals ever attempted, or perhaps were able, to display such an imposing list of University Honours, wherewith in their advertising sheet to captivate the public, as has been displayed by the fortunate publisher of these "New Reports."

This appearance of another candidate for a share of profits already so reduced as to afford, in the language of Mr. Sweet, "a scanty remuneration to the Reporters and the publishers," might well be looked upon as an intrusion even by existing rivals, and might almost justify a protest against the proceeding as unprofessional, by tending to reduce still further the remuneration of the existing Reporters; a remuneration which commercial enterprise, protecting its own profits, had already reduced to a bare pittance! To those who looked at the matter apart from private considerations, and only with a view to the interests of the profession and the public, the appearance of these "New Reports" has suggested the urgency of again making some attempt to provide a remedy for an evil which seems to possess a power of expansion and growth to be measured only by the minimum of commercial profit for which speculation will be content to risk a throw.

Here let me pause and consider some of the results which the present system of Law Reporting in its combined form of regular and irregular—authorized and unauthorized—Reports brings upon the profession and the public.

The irregular Reports are established, one and all, for the avowed purpose of relieving the profession and public from the expense of the regular Reports, and each, as it came into existence in succession, was based upon the principle of underselling its immediate predecessor. Thus, "The New Reports," the latest of the rivals, are cheaper than their immediate predecessor, "The Weekly Reporter." "The Weekly Reporter" is cheaper than "The Law Times," "The Law Times" is cheaper than "The Jurist," "The Jurist" is cheaper than "The Law Journal." Now, what effect has this repeated process of underselling had upon the cost of the regular Reports? Only to make their enormous cost a commercial necessity, and to preclude the possibility of reduction; because the effect of competition has been, not to supply their place by an adequate substitute, and thereby to remove them from the field, but only to reduce their circulation. What has been the effect of competition upon the competitors themselves? The answer must be, so to reduce their several circulations as, in the words already quoted, "to leave only a scanty remuneration to the Reporters and the publishers." And as, between the publishers and the Reporters,—those who create and who alone can create the property out of which the *res quocunque modo res* is to be got,—how fare the Reporters? Their profits, I fear, are somewhat after the fashion of those things which come forth from between the upper and nether mill-stones—ground to the uttermost! The following is a description of their remuneration, as furnished to me by one who, with adequate means of knowledge, speaks, I am satisfied, truthfully:—

"The persons who report now are remunerated, a few, well,—a few more, reasonably well,—most of them shabbily,—some *not at all* literally!"

Thus it would seem that the "*no cure no pay principle*" has been introduced; and under this it may be said that reporting has become a labour of love! Love of what? Notoriety! the Pleasure of seeing one's name in Print! Or, shall we suggest the more laudable object of "Improvement in their profession?" This would be well if these gallant volunteers did not publish the fruit of their loving labours as Authority; but as they do this, they are like students in anatomy seeking to acquire a knowledge of the science by *vivisection*. They are demonstrating upon the body of the living public, who reasonably enough cry out against the cruel operation.

If this vicious system wrought no evil but to its followers, it might

be suffered to pass without notice, and be left to reward them by its own consequences. But it does produce evil in more ways than one,—not only in reducing the already too "*shabby*" remuneration of those who labour in the same vineyard, but in adding another element of confusion and uncertainty to the law, and another item of cost to the practitioner. For the most serious aspect of this matter of expense is as it affects the purchasers of Reports. The effect of competition has not been to relieve the practitioner from the necessity of purchasing the regular Reports, nor, among the various competing irregular Reports, to establish any one series which would be sufficient for his purpose. The consequence is, that the addition of each set of competing Reports, though introduced with the tempting allurements of being a little cheaper than its immediate predecessor, is no benefit to the practitioner, but only an increased burden, unless indeed he refuses in disgust and despair to take in the new intruder; and thus expose himself to the risk of finding some case cited against him as authority of which he had never heard. It is a very favourite illusion with those who are interested in maintaining the present system of competition, to treat the question of expense as one which may be judged of by taking into account only the cost of their own series, and perhaps one other. Thus, say they, What can any practitioner desire more in the shape of Reports than is furnished by "The Law Journal" and, for example, "The Weekly Reporter?" And they put the case thus: The cost of these two is little more than half the cost of the regular Reports in the Court of Chancery alone (laying aside those of the House of Lords, Privy Council, and the Common Law Courts); and in them the profession has a complete series of Reports in all the Courts, including the Appellate. The Cases in "The Weekly Reporter" are reported weekly, and with the utmost promptitude, while the same cases are published in "The Law Journal" at the longer interval of a month, thereby allowing a sufficient period for bestowing the care necessary for ensuring accuracy; and all this work is done by barristers! What can the public or profession want more? To this it may be answered, If there were no other Reports to be cited than those in "The Weekly Reporter" provisionally, until those in "The Law Journal" were published, and then the latter only, the argument would be worth listening to. But it is obvious that the same argument may with equal plausibility be urged by "The Jurist," "The Law Times," and "The New Reports," each for its purpose allying itself with "The Law Journal;" and the result of this fond logic is, that the profession have four equal sufficiencies, and of course are left burdened with three redundancies,—where one would suffice, they are burdened with four. And, in addition, the argument ignores the existence of that indestructible element in the

question,—the regular Reports. In truth, the difference lies between those who bear the burden and those who help to impose it. The complaint of the one is founded upon the entire weight they have to sustain, the others think they answer it by referring to that part only of the weight which they separately contribute, and claim a triumph for such sophistry!

The annual cost of the entire series of Reports, regular and irregular, is now somewhere about £45, perhaps a little more, of which the cost of the regular Reports is about £30. The result is that few (if any) practitioners take in the whole of the series; and some few (but I believe an increasing number) have in despair or disgust given up taking in any, or at most confine themselves to one of the irregular sets,—depending upon the opportunities for reference which the Law Libraries of the Inns of Court and other public bodies afford. There still remain, however, a considerable body of practising barristers whose interest in the law as a science, as well as their duty to themselves and their clients, precludes from following this last example; and though they do not take in all the Reports, feel themselves obliged to take them in to such extent as to render the expense a grievous burden.

My own experience, I venture to think, from inquiries I have made, may be taken as a fair sample of the burden of the Reports as borne by a large body of practitioners in Lincoln's Inn. To some I know the burden is greater, to others doubtless it is less. Of the regular Reports, I take the House of Lords Cases, the Scotch Appeal Cases, the Privy Council Cases, the Cases before the Lord Chancellor and the Lords Justices, the Rolls, and the three Vice-Chancellors; I also take the Q. B. Reports, but no other Common Law Reports. Of the irregular Reports, I take and have taken for years "The Jurist," "The Law Times," and "The Weekly Reporter," and I admit I have once or twice found the disadvantage of not having taken "The New Reports." This series, imperfect as it is, costs me about £29 12s. 6d. per annum, exclusive of binding, and I believe I shall therefore be within the mark if I estimate that the expense of the present system to a great proportion of the Equity Bar is not less than £30 a year. For another estimate I would refer to the observations of the writer in "The Law Review," in an article on Law Reporting, published in 1848, vol. vii. p. 223.

Not only, however, is the expense a grievous burden, but the article, when bought and paid for, is not worth the money. The badness of the article is part of Mr. Sweet's complaint. Treated as an investment, you cannot calculate upon a loss of less than 50 per cent.—70 or 80 per cent. would perhaps be nearer the mark. Reports are not like treatises or books of practice, the value of which is neces-

sarily destroyed by a new edition or a more recent work on the same subject. Reports affect a more permanent character, and ought to have a more permanent value than fleeting publications. Apart, however, from the money value, the Reports are, as Reports, intrinsically bad. And why? Because they are mostly prepared under the lash of competition. The Reporters, especially those whose Reports are published weekly, have neither the leisure nor the opportunity of access to papers which are requisite to insure accuracy,—the wonder is, that the weekly Reports are, generally speaking, so accurate as they are. Again, the Reporter, to make up the weekly number, must have regard to quantity rather than quality: he has not the proper means, is not in a proper position, to exercise a sound judgment as to what should be reported and what not. A case which turns only upon its special circumstances is too often, through want of skill and experience in the Reporter, converted into a decision of general application, and sets the law wrong. Reporters of the present day cannot afford to do as Lord Campbell did in his day as a Reporter, keep a private drawer for the suppression of reports of cases which are bad law. This system of indiscriminate reporting re-acts to a certain extent prejudicially upon the regular Reports. They are, or fancy they are, obliged, in their own defence, to report cases which their better judgment would suggest should be omitted. Another result of the system is this: irresponsible and underpaid labourers cannot be expected to be always at their post, always equally diligent in their labours (unless, indeed, it be a labour of love!); and thus it sometimes happens that when a Reporter is absent, the notes of a brother Reporter are at his service, and the friendly office is of course returned, and this convenient reciprocity has a tendency to grow into a system. The result to the public is, that whereas they are perhaps comforting themselves with the assurance that in a multitude of counsellors at least there is *safety*, the reports of the same case which they read and pay for several times over in the several irregular Reports, are not necessarily the fruit of the labours of as many different persons, but may be, in all important particulars, the labour of a much less number.—possibly of only one! A system which employs five different men to do five times over a work which only requires to be done once, and that by one man, necessarily involves the evil at which my present observations point, especially if the remuneration to each man employed is shabbily less than the intrinsic value of the labour, if properly done separately by each. I fear it sometimes, too, happens, that the regular Reporter, pressed by his publisher for manuscript on the one hand, and by the demands of an increasing business on the other, finds it easier to avail himself of the imperfect labours of his brethren of the irregular Reports, than to arrange his

own notes, and himself extract from the pleadings and evidence in the cause the proper materials for his Report. And to all these evils I may add another, namely, the increasing unwillingness of counsel and solicitors, in consequence of occasional loss and inconvenient detention of briefs and papers, to allow to so many that opportunity of access which they would willingly afford to any One Reporter. The result, I believe, is, that the more the system is considered and looked into, the more it will be found to work prejudicially to the profession and the public; and experience shews that, left to itself, it contains within itself no principle of correction in the interest of the public.

Before I close this division of the subject, I wish to deal with a view of the question which I may expect will be warmly insisted upon in support of the existing system of competition, as opposed to any system to be founded upon exclusive privilege. The term Privilege, it will be said, is only a disguise for an Odious Monopoly, and that the proposal to establish one authorized set of Reports, to the exclusion of all others, involves a want of proper regard for the rights of property, inasmuch as it would tend to the serious injury, perhaps destruction, of valuable existing interests, which have grown up under a system based upon the principles of free-trade. I must not, however, be understood to represent that these views are universally entertained. On the contrary, a reference to articles on the subject which have appeared in "The Jurist" and "The Solicitors' Journal" during the course of the present year, will shew that those periodicals are prepared to meet the question, though affecting their own interests, in a praiseworthy spirit of candour and liberality. I shall endeavour to demonstrate that Monopoly and Free-trade have nothing to do with the question; and that the terms as well as the things they represent are abused by the attempt to apply either the one or the other to a system of Law Reporting *intended for citation as authority*; and, therefore, that any existing interests which may have grown up under such an abuse, must not be allowed to erect themselves into a barrier to obstruct, but on the contrary must give way to, any change in the system which the public interest requires. Whether they could fairly establish any claim to compensation, would be another question, and be open to very different considerations.

Monopoly and Free-Trade, the names as well as the things they represent, are properly applicable to that only which is the subject of legitimate commerce; they are not applicable to anything which is properly the function of the State. Legitimate commerce is properly the subject of individual enterprise, and to that it should be left. Interference by the State with that which is properly an object of commerce, and the subject of individual enterprise, is an anomaly,

unjustifiable upon principle—excusable only upon the plea of necessity, or its alternative—expediency. *E converso*, that which is properly a function of the State ought not to be permitted to become an object of commerce, so as to be made the subject of individual enterprise, *uncontrolled*. Whatever concerns the proper promulgation of the law, is a function of the State. Law Reporting is, in our system of jurisprudence, an essential part of the proper promulgation of the law *ex non scripto*, and therefore a function of the State. It is true, the discharge of this function has for too long a period been neglected by the State, and allowed of late years to become an object of commerce and the subject of individual enterprise. This neglect however, has not destroyed a principle—it has only perverted it; and the result is,—an abuse; and the consequence of that abuse,—the evils we experience.

A strong argument against the propriety of permitting Law Reporting to be an object of commerce may also be deduced from the results. The principles of free-trade, when properly applied by individual enterprise to a legitimate object of commerce, never fail, after fair trial, to produce, as a result, either increase in the quantity or improvement in the quality of the article to be consumed, without increase in cost; or an article of consumption equal in quantity or quality, or both, at a reduced cost. The Triumph of Free-Trade is the production of a better article and more of it at a less cost. But if there be neither increase in quantity, nor improvement in quality, nor reduction in cost, then are we not justified in concluding that the principles of free-trade have been abused by an attempt to apply them to an object to which they are not properly applicable? Now, the result of the experience of the last thirty years, in the application of the principles of free-trade, through individual enterprise, to Law Reporting, as an object of commerce, has been, by an increase in quantity, to deteriorate the article to be consumed, and at the same time to increase the cost; to produce results the very opposite of those which the principles of free-trade, when applied to an object to which they are properly applicable, never fail to secure!

Again, demonstration may be supplied in another form. The subjects upon which individual enterprise animated by the principles of free-trade, would endeavour principally to operate, through its proper agencies of capital, skill, and labour, are either the raw material, the manufactured article, or the market for consumption. In the case of Reports, the raw material consists of matters of litigation which arise in Courts of Justice; they can neither be increased nor modified, nor in any manner affected, either in quantity or quality, or cost, by any agency of the free-trader. The raw material is produced as it were ready for use upon the spot, and the man of commerce

must take it as he finds it. How stands it with the manufactured article—the Report itself? Confessedly, this must be the work of a privileged class. The free-trader must here admit restraint; there is no room here for either *his* skill or labour; the right to exercise both are conceded by him to the *privileged class*. And as to Capital, the only use he has for it is to pay just so much of the value of that privileged skill and labour as he finds he cannot withdraw for his own benefit. And lastly, as to the market; this, like the raw material, exists independently of any application of capital, skill, or labour by the man of commerce, for its creation, development, or extension. The market exists in the necessities of the public for a knowledge of the law—a market which, though it cannot be increased, may, nevertheless, be most injuriously diminished by the effect of those evil consequences which have resulted from permitting Law Reporting to become an object of commerce.

A very slight consideration will also serve to shew that the term Monopoly, as well as the thing it represents, is as misapplied to any proper system of Law Reporting as Free-Trade. Viewed in its true light, Law Reporting is a function of the State, and the public are concerned in its proper discharge; and if for this purpose it be expedient that persons be appointed exclusively for the office, and their employment be odiously termed a monopoly—as well might the term be applied in an odious sense to the appointment of the Registrars, nay to the Judicial Office itself! The objection is a mere *ad captandum* argument, urged by interest as an appeal to prejudice!

I will close this part of the subject by the following familiar passage from the pages of a Philosopher and a Jurist:—

“Deterred by an interested clamour against innovation, from abrogating what is useless, simplifying what is complex, or determining what is doubtful, and always more inclined to stave off an immediate difficulty by some patchwork scheme of modifications and suspensions, than to consult for posterity in the comprehensive spirit of legal philosophy, we accumulate statute upon statute, and precedent upon precedent, till no industry can acquire, nor any intellect digest the mass of learning that grows upon the panting student; and our jurisprudence seems not unlikely to be simplified, in the worst and least honourable manner,—a *tacit agreement of ignorance among its professors*.”—Hallam, *Mid. Ages*, vol. ii., p. 123.

III. I proceed, in the last place to consider *The Remedy!* How the existing system may be made what it ought to be,—that is, to secure for the public One Set of Reports which, being prepared with accuracy and published expeditiously and cheaply, shall be fit to be accepted as the only authentic evidence of the unwritten law.

The remedy, to be effectual, must go to the root of the evil. Now, the evils of the present system appear to me to have sprung from the

neglect of the State to provide properly for the discharge of a public duty; and thus it has happened that private enterprise having stepped in to supply those public requirements which the State had neglected, the result has been, what all experience would lead us to expect, that private interests have become so predominant that the public requirements are no longer duly cared for. The remedy should therefore be applied directly to the object of making the public interest paramount, and the private interest subordinate and subservient. The details of the remedy must, of course, be adapted to the exigencies of the particular case. Private enterprise, it will be seen, having converted Law Reporting into a commercial adventure with profit for its object has, however, not been able to make the adventure profitable merely through its own independent agencies, but has been obliged to enlist *privilege* into its service,—namely, the privilege which a Barrister enjoys of authenticating any Report to which his name is appended. Now, it is the unrestrained exercise of this privilege which has become the proximate cause of the evil. Without the Barrister's name appended, the Report could not be cited as authority. It is plain, therefore, that the evil would be corrected if the exercise of this privilege could be placed under such a control as the public interest requires. This renders it necessary to inquire into the nature of the privilege. Is it the privilege of the individual, which he has a right to exercise according to his own will and pleasure; or is it a privilege which he enjoys as a member of the Institution to which he belongs? If the former, then he can only be restrained in its exercise by the interference of the Legislature. If the latter, then the restraint may be effected by a regulation of the Institution to membership with which the privilege is attached. A little consideration will, I think, shew that the latter is the true nature of the privilege. Akin to the privilege of pre-audience and liberty of speech in Courts of Justice, a Barrister, as *amicus curiæ*, has the privilege of informing the Court from his own knowledge and experience of any case in point; this he may do in person when present. What is reporting but doing the same thing in substance when absent? In the one case, the only manner in which the privilege can be exercised, preserves it from abuse. In the *other*, unfortunately, the only manner of its exercise engenders abuse. Thus it appears that the privilege is professional and not personal; and therefore may be controlled by the Institution, to the extent at least of preventing any exercise of it which should be injurious to the public; for I take it that the privileges of the Bar are not, as has been sometimes objected against them, *autocratic*, and obnoxious to the charge of being *monopolies*, but rest for their foundation upon considerations of public benefit. Nor could any proposed limitation in the interest of the public of the privilege as

now exercised be justly complained of as a hardship to any individual barrister. Every Barrister would still be left perfectly free to exercise his skill and devote his labour to reporting for the information of the public. The value of such reporting depends upon its being done in the manner best suited to those public requirements which it professes to meet, and not upon the name of the Reporter being appended to the report;—the distinction will be found to lie between reporting for the purpose of conveying intelligence, and reporting for the purpose of recording the law. The public interest requires that both these things be efficiently done; but the public interest also requires that the two be kept distinct—that the one be supplied through as many different channels as unrestricted competition will open—that the other be preserved and made authentic by persons specially appointed in the interest of the public for that purpose. It is from the confusion and improper blending of these two distinct public objects, that the present evils have arisen. The proposal to restrain the exercise of this privilege amounts to no more than this—that things which hitherto, by an abuse, have been joined together to the public injury, should henceforth be separated and kept distinct in the manner which the public interest requires. The question may also properly be considered in the light in which it affects the Bar as a body, separate and distinct from the public generally. Thus considered, how does the question stand? We find that a small portion of the Bar (scarce perhaps, a twentieth part) are exercising a privilege which belongs to the entire body in a manner which is injurious to all the rest? Have not the great majority who are thus injured a right to protect themselves by a regulation which shall control the minority? Surely they have, or ought to have. The difficulty, however, if any exists, is only speculative; for I believe I am well warranted in saying, certainly with reference to the Reporters in the Courts of Equity, regular as well as irregular, that many of them are dissatisfied with the existing system, and would hail with satisfaction a change which would place Law Reporting upon a footing more compatible with the independence and honour of the Bar, and better adapted to the interests of the profession and the public. The Bar, as an Institution, being thus, as I conceive on public grounds, invested with the privilege of authenticating the Reports; and its members as a body, being legitimately interested in having the present system changed, and the preparation and publication of Reports placed upon a better footing, I propose that this should now be undertaken by the Bar as an Institution of the State; and that arrangements should be made for the proper appointment of Reporters, to be approved of by the Judges, and that no Reports but *The Bar Reports* should thenceforth be allowed to be cited as authority.

The steps to be taken for this purpose I suggest should be as follows:—

First, that a Meeting of the Bar be called by the Attorney-General, as the Head of the Profession, for the purpose of passing resolutions condemnatory of the present system,—insisting upon the expediency for a change, and approving the principle of the change proposed. As a precedent for a meeting to be held under such auspices for an object of general interest and importance to the profession, it may be sufficient to refer to the meeting which was held some few years back in Lincoln's Inn Hall, at the instance of the Parliamentary Bar, to settle a disputed point of general professional interest. The only question in this case would be, whether the present system of reporting could be considered a subject of sufficient importance to the interests of the Bar to justify the resort to a proceeding of such gravity. I shall greatly have mistaken the views and feelings of my professional brethren, and the interest they take in the matter, if I felt any doubt upon this point.

To make such a meeting effective for the purpose for which I suggest it, it would of course be *essential* that it should have *the sympathy and support of the leaders of the Bar*:—This would be requisite to give the proper weight to numbers. If resolutions to the effect above suggested were passed at a meeting, so attended and supported as to deserve the respect of the profession, I should then suggest that the Benchers of the four Inns of Court be memorialized by the Meeting, represented by the President, to concur in the necessary measures for the appointment of a Joint Committee of the four Inns (after the manner of the Joint Council of Education), to be called *The Council of Reporting*, and to consist of fifteen members, of whom the Attorney-General, the Solicitor-General, and the Queen's Advocate for the time being, should be members *ex officio*. The other twelve members to be elected and appointed, three by the Benchers of each Inn,—for the period of three years, and to be fairly selected from practising members of each department of the Bar, without reference to standing, so as to form a body who, from their position in the profession, would themselves be interested, and would also fairly represent the interests of the rest of the profession, in establishing and maintaining the constant efficiency of the "Reports":—vacancies in the body during the triennial period to be filled up by the remaining members, regard being had to the branch of practice in which the vacancy occurred; any of the three *ex officio* members vacating his office during the three years (otherwise than by elevation to the Bench), to continue a member for the remainder of the triennial period. I propose that this body should act gratuitously, and that five should be a quorum. That they should have the appointment and removal of all the Editors and Reporters,

and the management and direction of all the affairs, financial and otherwise, relating to the printing and sale of the Reports, with power, for the latter purpose, to delegate any part of their authority to a Committee of their own body, and to appoint one or more paid agent or agents. The Editors and Reporters to be subject, as to the Courts of Equity, to the approval of the Lord Chancellor, the Master of the Rolls, the Lords Justices, and the Vice-Chancellors, or any three of them (the Lord Chancellor and the presiding Judge of the respective Courts being of the quorum); as to the Courts of Common Law, to the approval of the Lord Chancellor, the two Chief Justices, the Chief Baron, the Judge Ordinary of the Divorce and Probate Courts, and the Judge of the Admiralty Court, or any three of them (the Lord Chancellor and the chief or presiding Judge of the respective Courts being of the quorum); and as to the Appellate Courts, to the approval of the Lord Chancellor, and two members of the Judicial Committee as to the Privy Council, and two Law Lords as to the House of Lords. That the Reporters so to be appointed and approved be recognised as officers of the respective Courts, have a place assigned to them at the Bar, and have access to and possession, for the purpose of reporting, of all copies of pleadings, evidence, papers, and documents connected with cases to be reported, which it is in the power of the Court to authorize or afford.

The staff of Editors and Reporters, and their particular duties, would of course be determined upon and prescribed by the Council; but it should be sufficient for the purpose of ensuring the attendance in each Court of one Reporter every day the Court sits,—the attendance to be as regular and continuous as that of a Registrar,—and for the preparation and publication in *Weekly Numbers* of Reports and Notes of Cases for the use of the profession and the public, and for citation in Court *until the more complete Reports* shall have been published. I propose that full and complete reports of cases shall be prepared and submitted to the Judge, and published once in every three months, or oftener if convenient, after the manner of the existing regular "Reports," so as to form separate volumes, as at present. These Reports should be published under the joint responsibility of the respective Editors and Reporters, and the series should be called "The Bar Reports," and from the time of their publication should be the only Reports citable as *authority*. This last object will be effectuated without the necessity of resorting to the exercise of any power inherent in the Judges, if the Bar resolve that the privilege of appending the Barrister's name to a Report *for the purpose of citation as authority*, be exercised in subordination to the authority of the Council. It is only by permission of the Judges, granted in the exercise of a judicial discretion as to what is for the public good, that the

present system of citation has grown up; and the same discretion, having regard to the same object, may, I conceive, withdraw or limit the permission:—So that the Judges and the Bar together would have full power to accomplish the object of making the "Bar Reports" the only authority to be cited.

The complete Reports should contain a copy or sufficient abstract of the decree or order, and be accompanied with proper headings, indexes, and digests, and, where necessary, with notes and commentaries elucidating the point decided. The object should be to render these Reports a work which will not only be a safe guide in the future administration of justice, but also, by preventing the accumulation of useless and mischievous matter for the future, help to promote the study of law as a science. In my view it would be desirable that the Editors and Reporters should be expected to devote their whole time and attention to the discharge of their duties, or, at all events, that the distraction of private business should not be permitted to any extent to interfere with the regular and efficient discharge of their duties; and that the salaries should be of an amount sufficient to secure the continued services of men duly qualified by learning and experience. And I should hope that the arrangements would be of such a nature, as regards salary and prospect of professional advancement, as to ensure the services of all such of the existing regular Reporters as might be able and willing to undertake the discharge of the more responsible duties which would be involved in the new system, and also of as many of the other gentlemen having experience in reporting who might be willing to offer their services, in preference (where qualifications were equal) to barristers who had not been so employed. The number of Reporters required would, I conceive, very greatly exceed the present number of the regular Reporters; and, in addition, the services of at least three responsible *working* Editors would be required:—And as their qualifications and position would be higher and their responsibility greater, their salaries should be higher also.

I will now consider how funds will be raised to support such a system as I propose. It will be observed that the scheme rests for its foundation upon this,—that "The Bar Reports" be the only Reports cited. If that be not secured, the proposal would in effect be only adding a seventh plague to the six already existing. I assume, also, that this exclusive privilege will be preserved from abuse by the qualifications of the persons to be appointed as Editors and Reporters; the responsible and honourable position they will occupy in the profession, and the check the Council of Reporting will always be able to exercise over them; and that by these means this result will be realized,—namely, that the Reports will be regularly and properly

prepared and published in such a manner as to command the confidence of the Judges and the Bar, and satisfy the wants of the profession and the public. Upon these assumptions (and my confidence in the ability and willingness of the Bar, leads me to believe the result I depend upon will be realized), I should not propose to adopt a scale of prices which would enter, or have the appearance even of entering, into competition with any periodicals which are established for the purpose of supplying the profession and the public with information as to the proceedings in Courts of Justice. I conceive that "The Bar Reports," having a distinct and higher object, would assume a place among law publications as a standard work of the highest importance and merit, and be purchased by the profession and public accordingly, and consequently be self-supporting.

I should suggest the following scale of annual subscriptions:—

| | £ | s. | d. |
|---|----|----|----|
| For the entire Series | 10 | 10 | 0 |
| Courts of Chancery and Appellate Courts . . | 6 | 6 | 0 |
| Courts of Common Law and Appellate Courts . . | 6 | 6 | 0 |
| Courts of Chancery | 5 | 5 | 0 |
| Courts of Common Law | 5 | 5 | 0 |
| The Appellate Courts | 4 | 4 | 0 |

Other subdivisions might be made to suit the wants of particular classes. The weekly publication should be considered as part of the entire series only. If taken with any of the subdivisions, I would propose that a charge of one guinea should be added. Subscriptions paid in advance should be entitled to a liberal deduction.

As the scheme is based upon the expectation of being self-supporting, and to be independent of any grant of public money, I think the Government may fairly be expected to take a sufficient number of copies for the use of the various functionaries connected with the administration of justice at home and abroad,—upon the same principle as Acts of Parliament are now supplied to magistrates and various public bodies. The charge to the Government should be at a liberal discount in proportion to the number taken.

I would suggest that the printing and sale should be conducted upon one of these two plans: either by contract with some printer of established reputation and sufficient capital, and a Manager at a salary; or by the establishment of a Public Press, to be called "The Inns of Court Press," to be established by Charter, with a capital to be provided by subscription or in agreed proportions by the Inns of Court, and repaid with a moderate rate of interest (say 4 per cent.) out of profits; to be under the management and control of a Committee of the Council of Reporting and a Manager at a salary and a commission

upon the proceeds of advertisements. The Press to be at liberty to undertake also the printing and publication of works on legal subjects by any member of an Inn of Court, under the control and supervision of the Committee; the object being to secure to authors a larger and fairer share in the profits of their labours than they are now able to obtain.

The funds to be realized by the sale of the Reports and profits of the Press (if established) should be applied, after payment of all expenses of printing and management, to the payment of such liberal salaries to the Editors and Reporters as the Council should fix, and then to the formation of a Guarantee Fund (the maximum to be fixed by the Council) to be applied in payment of such compensation to existing interests affected by the proposed arrangements as the Council may deem it just and equitable to award; and also for superannuation allowances to any Editors or Reporters who, through sickness, accident, or infirmity, might be disabled from continuing their labours. If, after answering these several purposes, any surplus should remain, I propose that the benefit of that surplus should be given to the Public, either in the form of supplying Government copies gratis or a general reduction of price, or in such other way for the public benefit as the Council may direct,—so that commercial profit be thoroughly eradicated from the system.

I do not pretend within the compass of this letter to do more than state the nature and principle of my proposals, and give a very general outline of their leading objects. The duty of preparing the necessary details would, if the proposals should be thought worthy of being adopted, devolve upon the Council of Reporting, and the arrangements they would sanction and mature, would require the confirmation either of a Charter or an Act of Parliament, probably of both.

In the proposals I have ventured to make, my object has been to aid in redressing a public grievance, through the instrumentality and agency of the Bar (in preference to the external authority of the Government or the Legislature), by regulating, in a manner calculated to advance the public interest, the exercise of a privilege vested in the Bar directly connected with Reporting. I have adopted for this purpose the instrumentality and agency of the Bar because I believe not only that its own legitimate interests will be advanced and secured in a manner consistent with its independence and honour, but because I believe also that the elements of which the Council of Reporting will be composed, the nature of its powers, and the sanction under which they will be exercised, will be such as to afford the best security for a wholesome exercise of patronage, and prevent the conscious security of an official appointment degenerating into the

languor of supineness ; thus correcting as far as possible the evil tendencies of privilege without incurring the actual evils of competition.

Such as the proposals are, I now submit them to the consideration of the profession and the public.

Nihil simul inventum est, et perfectum !

Before I conclude, I must avail myself of the opportunity this publication affords of gratefully acknowledging the various communications with which numerous professional brethren have kindly favoured me in answer to the suggestions which, in May last, I distributed for private circulation among the Bar ; several of them will recognise in this paper the use I have freely made of their views and observations. And I beg particularly to thank Mr. Beavan and Mr. De Longueville Giffard for very valuable assistance and information, and also Mr. Nathaniel Lindley for a most useful Paper on Legal Reports, which, although in some minor matters it varies a little from my suggestions, I have, with his permission, printed as an Appendix to this letter, considering that it represents opinions now very generally entertained by the Chancery Bar.

In conclusion, thanking you, Sir, for your courtesy in permitting me to make this form of address the medium of communicating my views to the profession and the public, and with profound respect for your distinguished attainments as an Advocate and a Jurist,

I subscribe myself with great sincerity,

Your obedient faithful servant,

W. T. S. DANIEL.

10, Old Buildings, Lincoln's Inn.
12th September, 1863.

APPENDIX.

PAPER ON LEGAL REPORTS, BY NATHANIEL LINDLEY, ESQ.

THE object of a Report is, not to inform the public of all that passes in a Court of Justice, but to preserve a record of what is decided to be law ; and the object of having this record is, to facilitate the study of the law itself.

Hence, the duty of a Reporter is widely different from that of a newspaper writer on the one hand, and from that of the Registrar of the Court on the other. The compositions of the first are not intended for study, and the duty of the last is only to register the final result of each particular case which is brought before the Court.

Reports, to be good, must be so both as regards the subjects reported and the manner in which the Reports themselves are framed.

With respect to subjects reported, care should be taken to exclude—

1. Those cases which pass without discussion or consideration, and which are valueless as precedents.
2. Those cases which are substantially repetitions of what is reported already.

On the other hand, care should be taken to include—

1. All cases which introduce, or appear to introduce, a new principle or a new rule.
2. All cases which materially modify an existing principle or rule.
3. All cases which settle, or materially tend to settle, a question upon which the law is doubtful.
4. All cases which for any reason are peculiarly instructive.

With respect to the manner in which the Reports should be framed—

1. They should be accurate.
2. They should be full, in the sense of containing everything material and useful.
3. They should be as concise as is consistent with the above objects.

In particular they should show—

1. The parties.
2. The nature of the pleadings.
3. The essential facts.
4. The points contended for by Counsel.
5. The grounds on which the judgment is based.
6. The judgment, decree, or order actually pronounced.

Reports which give the judgment with little or no information respecting the pleadings, the evidence, or the arguments, are of no real utility; whilst those, on the other hand, which give the pleadings, the evidence, and arguments at unnecessary length, are open to the objection, that they entail waste of money, time, and trouble on those who have to procure and read them. Both classes of Reports are discreditable to their authors; for both are the result of idleness and indifference to the wants of those for whom the Reports are intended.

It has, indeed, been plausibly urged, that the judgment itself should contain a statement of the facts deemed by the Judge to be material to be established, as well as of the reasons on which he decides upon them, and that a good Report should give the judgment only. But even if all judgments were as elaborate as, according to this view, they should be, it would still be found that a Report of the judgment,

and no more, would exclude much matter of the greatest value. It does not follow that what alone is material to the judgment, is alone worth putting into the Report. Much is to be learned by a study of the pleadings, even although there may have been no occasion for the Judge pointedly to allude to them; and it must never be forgotten that for practical purposes it is of the greatest advantage to know in what form each case was brought before the Court. In many cases, however, such matters would naturally be passed over by the Judge, whose attention is, or should be, concentrated on those points on which the case, when mastered, is found to turn.

With respect to the publication of Reports, it is desirable—

1. That they should be published as speedily as is consistent with a conscientious discharge of the Reporter's duties.
2. That they should be printed in clear type, on good paper, and be of a convenient portable size.
3. That they should be accompanied by good indexes and marginal headings.
4. That they should be sold for the lowest price which is consistent with the payment of the expenses of their publication.

Having stated the requisites to a good Report, it is necessary to consider how their attainment may be best secured.

In any other country but this, it would be considered as much the duty of the Government to publish the decisions of the Superior Courts, as to publish the enactments of the Legislature. Both are in this country of equal importance to the public; for, without the study of both, no useful knowledge of English law can be acquired. Nor are there any disadvantages necessarily incidental to such a measure; for the Reports would certainly pay their own expenses, and the Reporters might be kept independent of Government and judicial influence, and at the same time efficient, by vesting the power of removing them, if not also the power of appointing them, in a Committee of the members of the Bar.

But without any Government assistance at all, a series of Reports in every respect satisfactory may be secured by a little exertion. The profession is just now unquestionably suffering from a plethora of Reports; and it is felt to be desirable, if possible, to have only one set, and to have it with reasonable expedition, and at a reasonable cost. There are apparently two modes of obtaining this object without invoking the aid of Government. One mode is, to suppress what are called the irregular Reports, and arbitrarily to allow one set only to be used. The other mode is, so to improve the irregular Reports, as to render it unnecessary to have any others. The first of these modes would be unjust, inexpedient, and impracticable, whilst the second is open to none of these objections. The existence of the irregular Reports is owing to the circumstance that the regular Reports do not supply the

wants of the public; and experience shows that the competition of the irregular Reports is not sufficient to secure any permanent improvement in the regular Reports. The result of the present system undeniably is, that good Reports are to be had at a moderate price; and a stranger might well ask, what more do you want? The answer is by no means obvious, and would not occur to any one who was not practically acquainted with the peculiar position of what are called the regular or authorized Reports.

The authors of these Reports enjoy advantages which the others do not. The advantages consist mainly in greater facilities in obtaining papers, and in some cases in a revision of the sheets by the Judges. Whatever the advantages, however, may be, it is certain that a very considerable part of the persons who require to take in the Reports, feel obliged to take those which are authorized. However bad they may be, and however excellent others may be, the authorized Reports must practically be had by a certain class of the Report-consuming public. The authorized Reports, however, are by no means what they should be. They are all very expensive—many of them are shamefully in arrear, and some of them are disgracefully done. Hence, there are just grounds of complaint against them, and a strong desire is felt for improvement. Free competition in Reporting does not remove the evil; and the reason obviously is, that the authorized Reports enjoy advantages which their rivals do not. If all the authorized Reports were cheap, good, and not unreasonably behind-hand, the complaints now so loud and just would cease to be heard.

To improve the regular or authorized Reports, is, therefore, the great thing to be accomplished. To do this, all that appears to be necessary is—

1. To have Reporters appointed and removable by the Judges or by a Committee of the Bar, or by the Judges and a Committee of the Bar jointly.
2. To give those Reporters facilities of access to all pleadings and other documents forming part of the records of the Court. It would be well if all documents furnished to the Judge should, when he has done with them, go to the Reporters for a time.
3. To require the Reporters to publish their Reports periodically, say once a month, and never to be more than a month in arrear.
4. To fix the price of the Reports at as low a sum as would suffice to pay the expenses of their publication, including a liberal remuneration to the Reporters.

There can be very little doubt, that if the Reports were what they should be, they would, although sold at a comparatively low price, produce amply sufficient to pay their expenses;—and if a tolerably large minimum demand could be insured, as it might be by opening

subscription lists, there would be no difficulty whatever in finding a publisher who would advance what might be necessary to defray the current expenses of publication. Should there, however, be any such difficulty, it would be easily removed by allowing subscriptions to be paid in advance: a subscription, if paid in advance, should be lower than if paid afterwards.

It may be urged as an objection to this or any similar plan, that it would still leave room for Reports published more speedily, though with less care, than the authorized series. This would to a certain extent be true; but it would not be a serious evil. For the authorized Reports would naturally be preferred to all others for permanent use; and the irregular Reports would cease to be of any real value, except during the short interval which would elapse between the decision of a case and the appearance of a Report of it in the authorized series. The present nuisance of having several concurrent sets of permanent Reports, would, however, be removed; for if the authorized Reports contained all the cases worth reporting, there would be no occasion to preserve the other Reports. The cases to be found in them and not in the authorized series, would, *ex hypothesi*, be worthless, and the citation of them would naturally cease.

My letter to Sir R. Palmer, as printed, got into moderate circulation, and was received with sufficient favour to justify an attempt to give effect to the suggestion contained in it of calling a meeting of the Bar, to consider the question under the authority of the Attorney-General. At the time the letter was published (12th of September, 1863) Sir William Atherton was Attorney-General. His death occurred shortly afterwards; and in the October following Sir Roundell Palmer was gazetted Attorney-General and Sir Robert Porrett Collier Solicitor-General. Under these circumstances, on behalf of all who had interested themselves in the question and not on behalf of myself only, I sent to Sir R. Palmer, as Attorney-General, a letter of which the following is a copy:—

10, Old Buildings, Lincoln's Inn,
30th October, 1863.

DEAR MR. ATTORNEY,

May I take the liberty of asking whether if a requisition numerously signed by Members of the Bar requesting you to call a meeting of the Bar for the purpose of considering the present state of Law Reporting with a view to a change of system were presented to you, you would be disposed to accede to the request. I make this

application because none of us who take an interest in the matter and desire the Meeting would wish to initiate an abortive proceeding. Should you intimate your willingness to accede to such a request, I would take all possible care that your doing so should not be regarded as an intimation of any opinion on your part either as to the existence of any evil in the existing system calling for a change or as to the necessity or expediency of any change that might be suggested. Allow me to offer you my sincere congratulations, and to subscribe myself,

Your obedient faithful servant,
W. T. S. DANIEL.

The Attorney-General.

On the following day (the 31st of October) I received from the Attorney-General the following reply :—

Lincoln's Inn,
October 31st, 1863.

DEAR DANIEL,

I must first thank you for your kind congratulations, and next for your pamphlet, which is marked by your usual ability.

It would, I think, depend very much upon the number and character of the signatures whether I should feel myself justified in inviting the Bar to meet in compliance with such a request as that which you suggest. The subject (as far as I know) is one over which no control has ever yet been asserted on the part of the Bar, although formerly it was under the control of the Judges. Nevertheless the Bar have undeniably an important interest in it. I do not think that the Attorney-General should convene a meeting on such a subject except in deference to a strong expression of opinion; but I have not myself any objection in principle to doing so if there should appear to be anything like a general wish for it.

Believe me,
Yours ever sincerely,
ROUNDELL PALMER.

W. T. S. Daniel, Esq., Q.C.

Immediately on receipt of this reply, acting in concurrence with members of the Bar who approved the course I was taking, I prepared a memorandum of which the following is a copy :—

TO SIR ROUNDELL PALMER, KNIGHT,
Her Majesty's Attorney General.

WE, the undersigned members of the English Bar, request that you will be pleased to call a meeting of the Bar at such time and place as you

shall think proper, for the purpose of ascertaining the opinion of the Bar as to the existing system of Law Reporting with a view to the amendment thereof.

Dated this day of November, 1863.

In order to facilitate obtaining signatures to the requisition, I had eleven copies prepared on separate sheets, which were divided between myself and those members of the Bar who volunteered their assistance. The date was left blank, to be filled in when the sheets should be returned to me with signatures; and I signed my name to each of the eleven sheets by way of authentication. These eleven sheets were returned to me on the 13th of November, 1863, and the date was then filled in and my name struck out of all the sheets but one. On the following day I presented the sheets as signed to the Attorney-General. He carefully looked through them; and then remarked that, although they were sufficiently representative of the Equity Bar and the body of Conveyancers, he saw but few names of members of the Common Law Bar; and on that account he did not consider the signatures obtained sufficiently representative, and returned me the signed sheets. I then explained that I had not myself seen any of the leaders of the Common Law Bar, but if he would suspend his judgment I would myself go down to Westminster Hall and see how far the leaders, and the Common Law Bar generally, sanctioned the request for a meeting of the whole Bar, and would ascertain and report to him what I found to be the feeling of the Common Law Bar upon the subject. The Attorney-General kindly consented to this request, and thereupon I took the earliest opportunity of going to Westminster Hall, and there had the good fortune to meet with Mr. Serjeant Pulling, Mr., now Mr. Justice, Field, and Mr. Serjeant, afterwards Mr. Justice, Hayes, and others, who approved the request for a meeting. I had the signed sheets with me, and left some of them with them to get signed. Those sheets were afterwards returned to me on the 18th of November, with the signatures of twenty-six leaders of the Common Law Bar, and many more juniors; and on that day I sent the requisition, so signed, to the Attorney-General, accompanied by a letter, of which the following is a copy:—

10, Old Buildings, Lincoln's Inn,
18th November, 1863.

DEAR MR. ATTORNEY-GENERAL,

I beg now to hand to you the requisition of the Bar requesting you to convene a meeting on the subject of Reporting—you will find appended to the papers the signatures of 382 Members of the Bar, and amongst them those of the leaders at the Equity Bar with only two exceptions; also those of twenty-six leaders at the Common Law Bar, a list of which accompanies. This list contains the name of Mr. Phipson, whose signature is not appended to the requisition. He is now, I believe, absent from London through ill health, but I inclose a letter which he wrote to me upon the subject after perusal of my pamphlet, from which you will see that he approves of my suggestions, and particularly of the action I proposed through the Attorney-General.

In consequence of what fell from you on Friday last as to the feeling of the Common Law Bar upon the subject, I have endeavoured by personal communication at Westminster Hall to ascertain what that feeling is. And as far as I can ascertain it I believe it to be divided. I think there is much more of indifference than of any other feeling. With some there is an objection on the ground that any such change as that suggested would interfere hardly with existing interests, especially those of the younger Barristers who now make some income by reporting. Others object on the ground that competition with all its evils is better than an exclusive system in any shape ever can be. Others there are, and I think not a few, who admit the public mischiefs of the present system as fully as the Equity Bar, and would desire some such change as that suggested, but are not zealous about it, because individually they find that their professional duties do not oblige them to take more than one set of Reports, and "The Law Journal" satisfies their requirements. Even with the objectors, however, I did not ascertain that they went so far as to object to a Meeting being called to discuss the question, but rather wished it, though they would not actively promote it.

I may add that with a few exceptions the authorized Reporters and those connected with "The Law Journal" have not signed, but I feel justified in stating that their not signing is not attributable to any feeling of hostility, but rather to a desire to be strictly neutral.

You will observe, I doubt not, the number of leading Juniors at both Bars, and also the number and names of the *Conveyancers* who have signed.

May I venture to hope for a favourable reply, and that at as early a period as you may find yourself able to give the subject your attention.

Your obedient faithful servant,

The Attorney-General.

W. T. S. DANIEL.

On the following day (the 19th of November) I received from the Attorney-General a letter, of which the following is a copy :—

Lincoln's Inn, November 19th, 1863.

DEAR DANIEL,

I have to acknowledge the receipt of your letter of yesterday with the requisition of the Bar requesting me to call a Meeting on the subject of Reporting ; and in reply I beg to say that I shall be happy to call a meeting as requested, and shall be glad to hear from you on what day, and at what time you think it will be convenient for the Meeting to be held. I think that the Hall will be the most suitable place, and it will be desirable, therefore, to ascertain if the use of it can be granted for the purpose.

I should mention that the Privy Council will begin to sit on Thursday, the 26th, and if the arrangements for the proposed Meeting will not allow of its being held before that day, I should be glad to have it fixed for as late a time in the day as it conveniently can be.

Believe me,

Yours very truly,

ROUNDELL PALMER.

W. T. S. Daniel, Esq., Q.C.

On the 21st of November the Attorney-General sent to me a notice calling a meeting of the Bar for the 2nd of December, of which the following is a copy :—

MEETING OF THE BAR.

A Requisition having been presented to me very numerously signed by Members of the Bar, by which I am requested to call a Meeting of the Bar at such time and place as I shall think proper for the purpose of ascertaining the opinion of the Bar as to the existing system of Law Reporting with a view to the amendment thereof: I do hereby, in compliance with the said Requisition, invite the Members of the Bar to meet by permission of the Treasurer in the Dining Hall of Lincoln's Inn on Wednesday, the 2nd of December next, at half-past four o'clock in the afternoon for the above mentioned purpose.

(Signed) ROUNDELL PALMER,

Attorney-General.

In the interval between the 19th and 21st of November the consent of the Treasurer to the use of the Hall for the purpose of the meeting had been obtained by me.

The number of Barristers who signed the requisition to the

Attorney-General to call the meeting was 382, and, for the purpose of preserving a record of their names, I give the following list :—

1.

To Sir **ROUNDELL PALMER, Knt.,**
Her Majesty's Attorney-General.

WE the undersigned Members of the English Bar request that you will be pleased to call a meeting of the Bar, at such time and place as you shall think proper, for the purpose of ascertaining the opinion of the Bar as to the existing system of Law Reporting, with a view to an amendment thereof.

Dated this 13th day of November, 1863.

FitzRoy Kelly.
E. B. Denison.
J. Hinde Palmer.
John Fraser Macqueen.
E. Bazalgette.
W. M. James.
W. A. Collins.
S. B. Toller.
Henry W. Cole.
W. R. Grove.
J. G. Phillimore.
John Bailly.
F. Shapter.
Richard Baggallay.
C. Jasper Selwyn.
Richd. Malins.
T. W. Willcock.
Josiah W. Smith.
R. Paul Amphlett.
Thos. W. Greene.
Richd. D. Craig.
James Bacon.
John Osborne.
H. M. Cairns.
Arthur Hobhouse.
Charles Hall.
James Dickinson.
Thos. H. Terrell.
J. J. Hamilton Humphreys.
E. Leigh Pemberton.
Francis Roxburgh.
Geo. Goldsmith.
John Sheffield.
R. G. Welford.
P. M. Laurance.

John Cutler.
Fredk. A. Burgett.
Fred. Dumergue.
Alex. Pulling.
H. W. Sotheby.
Lewin Taverner.
Arthur Symonds.
Newton R. Smart.
G. Murray.
James T. Hopwood.
F. Vaughan Hawkins.
Charles S. Roundell.
Granville R. Ryder.
John Spankie.
Michael R. Barry.
Edward C. Browning.
Daniel C. Lathbury.
Leonard B. Seeley.
Fras. H. Appach.
Charles Francis Trower.
Thos. Bates.
Alfd. Hill.
W. W. Kerr.
S. H. Boulton.
J. Ignatius Williams.
Arthur P. Whately.
George E. Cottrell.
Edward Hedge.
F. Hoare Colt.
Athelstane Willcock.
J. Sayer.
E. W. Stock.
S. H. Burbury.
Marcus Martin.
R. Ryder Dean.

| | |
|---|---------------------|
| J. T. Humphry. | J. C. Heath. |
| Thomas Henry Haddan. | J. E. Bright. |
| W. R. Ellis. | E. Chisholm Batten. |
| Henry Fox Bristowe. | Frans. S. Reilly. |
| Arthur John Wood. | H. Hopley White. |
| John Digby. | Thomas Chambers. |
| G. Denman. | H. Hawkins. |
| (Only as thinking the matter fit to be discussed.) | William Field. |
| W. C. Beasley. | T. Dunn Salmon. |

2.

| | |
|------------------------|--------------------------|
| G. M. Giffard. | Wilson Hetherington. |
| Alfred Hanson. | Thos. Stevens. |
| Ford North. | George Simpson. |
| Henry W. Busk. | T. W. Wigglesworth. |
| W. H. Bagshawe. | Graham Hastings. |
| Geo. Sweet. | Alexander Daunev. |
| W. Mackeson. | W. H. Terrell. |
| J. R. Kenyon. | F. J. Wood. |
| Henry Cotton. | C. Cecil Trevor. |
| Benjamin Hardy. | Edwd. Cutler. |
| George Lake Russell. | J. N. Goren. |
| H. R. Vaughan Johnson. | H. Pace. |
| O. D. Tudor. | George R. Harding, Junr. |
| W. R. F. Boyle. | S. James. |
| Wm. Park Dickins. | B. Babington. |
| Wm. W. Faber. | Fredk. Currey. |
| Fielding Nalder. | W. B. Glasse. |
| Ben. B. Swan. | Francis F. G. Walparsch. |
| Charles P. Phillips. | G. Osborne Morgan. |
| Wm. Freeman. | Jas. Annes Young. |
| Jasper K. Peck. | C. Grey Wotherspoon. |
| Homersham Cox. | John B. Karslake. |
| C. H. Russell. | Bassett Smith. |
| C. W. Bardswell. | D. Logan. |
| William B. Heath. | J. Francis Chance. |
| Edward Dunn. | John H. Gough. |
| W. H. Torriano. | R. E. Cumberland. |
| H. T. Erskine. | J. Underhill. |
| Horace Davey. | E. Comyn. |
| Richd. S. Tripp. | T. H. Goodwin Newton. |
| Charles Pontifex. | Charles Kent. |
| Fredk. Stallard. | Richard Searle. |
| G. S. Law. | James F. Jeffrey. |
| Wm. Cracroft Fooks. | R. Griffith Williams. |
| Francis Webb. | E. Callaghan. |
| Arthur Kekewich. | John L. Tatham. |
| Charles Parke. | Rickman Godlee. |

J. B. Braithwaite.
Edward Harrison.
Simpson Edwards.
A. G. Marten.
Joseph W. Chitty.

Stephen Soames.
Hunter Rodwell.
Hy. Udall.
Robt. Hy. Hurst.

3.

J. H. Taylor.
Harris Prendergast.
C. Locock Webb.
Thomas H. Fischer.
C. T. Simpson.
J. Lorence Bird.
T. Lewin.
E. J. Bevir.
J. L. Kettle.
W. T. S. Daniel.
L. Mackeson.
Joshua Williams.
W. P. Jolliffe.
E. K. Karlake.
George Druce.
Edward F. Smith.
Frank W. Bush.
Thos. C. Renshaw.
C. M. Roupell.
F. P. L. Hallett.
John Westlake.
F. W. G. S. Everitt.
Henry C. Phear.
Mark Dewsnap.
Henry Stevens.
Edgar Rodwell.
John Rendall.
C. M. Elderton.
E. L. Nugent.
Frederic C. Rasch.
C. Chapman Barber.
John Young Kemp.
G. Jessel.
Edward Bury.
Geo. Little.
Thomas Stevens.
James Pearse Peachey.
J. C. W. Buxton.
Rd. D. M. Sandys.
C. G. Prideaux.
Robert R. A. Hawkins.
H. Sargent.

George N. Colt.
E. T. Holland.
T. C. Blofeld.
John Walker.
M. Archer Shee.
W. J. Bovill.
Thomas Webster.
F. G. A. Williams.
Edward Lloyd.
C. Stewart Drewry.
C. Clement Berkeley.
Gordon Whitbread.
T. Arch. Roberts.
Edw. Fry.
F. A. Bedwell.
Edward E. Kay.
J. E. Woodroffe.
Edmd. Beales.
J. F. Schomberg.
J. Surrage.
H. Chance.
Henry R. Woodhouse.
T. S. B. Eastwood.
Springall Thompson.
William Atkin.
Henry Casson.
Thos. Platt.
Arthur J. Wigram.
W. Knox Wigram.
J. Henry Dart.
E. Macnaghten.
R. W. L. Forster.
Leonard Field.
Thos. C. Briggs.
Edward Webster.
Arthur Burrows.
J. S. Darnbrough.
Hilton T. Jenkins.
J. Wardo-Dobbin.
Marshall Hall.
W. Smart.
H. C. Folkard.

W. W. Barry.
 W. J. Tapp.
 W. F. Rae.
 J. Boyd Kinnear.
 Pryce A. Major.
 George Waugh.
 R. C. Christie.

W. W. Karslake.
 E. C. Clark.
 Henry Thos. Salmon.
 Richd. S. Ferguson.
 E. T. Smith.
 J. S. Godfrey.

4.

Hans Busk.
 Benson Blundell.
 W. Powis.
 Wm. Hosack.
 William D. Oliver.
 G. F. Speke.
 R. Watters.
 Alfred Willa.
 Henry Matthews.
 W. J. Bernhard Smith.

James J. Aston.
 B. Forbes Mosse.
 Henry M. Dunphy.
 E. P. Wood.
 Charles Wood.
 George Miller.
 Henry T. J. Jenkinson.
 A. Gallway.
 Vernon Lushington.

5.

Alfred Waddilove, D.C.L.
 R. Stuart.
 Robert Phillimore.
 Robert Lush.
 H. Manisty.
 G. Hayes.
 Fred. O'Malley.
 John C. F. S. Day.
 Wm. Baliol Brett.

John F. Villiers.
 G. W. Hastings.
 A. Cleasby.
 Arthur Collins.
 Morris S. Oppenheim.
 G. Harry Palmer.
 Wm. Grantham.
 B. T. Williams.

6.

Edward James.
 C. Hoggins.
 Stephen Temple.
 J. Monk.
 J. D. Coleridge.
 A. F. O. Liddell.
 Æ. J. McIntyre.
 Markham Law.
 Joseph Wm. Dunning.
 George Mellish.

W. D. Gardiner.
 Dec. Sturges.
 John Rigby.
 Arthur Dixon.
 Daniel Jones.
 James Stirling.
 Charles B. Locock.
 James Charles Whitehorne.
 T. Tindal Methold.
 Montague Smith.

7.

John W. Rooth.
John Simmonds.
W. W. O'Brien.
S. Haywood Blackmore.
Thos. Randle Bennett.
J. E. Palmer.

Wm. Pearson.
Wm. D. Evans.
Francis Housman.
H. F. Shebbeare.
C. J. Shebbeare.
Edwin Ward.

8.

A. G. Codd.
John A. Russell.
W. P. Dymond.
David Keane.
J. E. Davis.
Henry Buller.
F. J. Smith.

C. T. Smith.
Douglas Brown.
Charles Boyle.
Gordon Allan.
J. B. Phear.
J. F. Collier.

9.

W. M. Best.

W. Brown.

10.

Clem. T. Swanston.
A. C. Eddis.
John Pearson.
Fredk. C. J. Millar.
C. R. Freeling.
Francis Nichols.
William Lensdale.
Edmund James.

Nathl. Lindley.
S. M. Martindale.
W. H. Townsend.
G. Horsey.
Steph. Cracknall.
W. Worsley Knox.
William Stebbing.

11.

A. Edgar.
Josiah Rees.

De G. Dax.

The following is a copy of the names of the twenty-six leaders of the Common Law Bar, which I handed to the Attorney-General, as having signed the lists, with a reference to the lists they severally signed:—

LEADERS OF THE COMMON LAW BAR WHO HAVE SIGNED.

The Queen's Advocate (5).
Sir FitzRoy Kelly (1).

W. R. Grove (1).
J. B. Karslake (2).

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|---|--|
| Montague Smith (6). | G. Denman (1) (only as thinking the matter fit to be discussed). |
| J. D. Coleridge (6). | Geo. Mellish (6). |
| Edward James (Attorney-General for the Duchy of Lancaster) (6). | A. Cleasby (5). |
| Stephen Temple (6). | Robt. Lush (5). |
| J. Monk (6). | H. Manisty (5). |
| C. Hoggins (6). | Serjt. Hayes (5). |
| A. F. O. Liddell (6). | Fredk. O'Malley (5). |
| Hunter Rodwell (2). | W. Baliol Brett (5). |
| The Common Serjeant (1). | T. W. Phipson (letter). |
| J. Geo. Phillimore (1). | Dr. Waddilove (5). |
| H. Hawkins (1). | Serjt. O'Brien (7). |

N.B.—The numbers refer to the paper on which the signature will be found.—W. T. S. D.

The meeting was duly held at the time and place appointed. The Hall was well filled: the numbers were estimated at about 700. The intention to hold the meeting, and its object, had been noticed as a matter of professional interest in some of the London daily papers, especially in "The Daily News" of the 30th of November, and "The Times" of the 2nd of December.

The article in "The Times" is worth perusal, and, therefore, I print it.

The Attorney-General has, we are informed, called a meeting of the English Bar to consider the question of "Law Reporting," and the meeting is to be held this day. So unusual an occurrence ought to attract public attention, for we may depend upon it that when the lawyers are all met together there are outside interests at stake. It is not for nothing that all the cells and cupboards and attics that are clustered round Westminster Hall and inside Lincoln's Inn are sending forth their frequenters to one spot to-day. It must be a very practically felt evil which could induce so over-worked a lawyer as the Attorney-General to give himself the trouble of attending such a gathering. If there be an evil of such great moment pressing upon the lawyers, we may be sure that it is also pressing upon us laity; for the lawyers are not likely to bear any more of it than they cannot contrive to shift off their own shoulders. Lord Westbury some time since gave us a glance at the system, and its effects upon general interests, when he publicly and deliberately said that "No one can tell with certainty whether a particular case which he finds reported, and which is supposed to govern the particular case in which he is interested, will or will not be followed by the Judges." Nothing can be worse than this. If recorded cases are but pitfalls of bad law, such a dangerous labyrinth may be puzzling to the lawyers, but it must be

death to the clients. We shall do right, therefore, to regard with some watchfulness the proceedings of the learned body who are to-day to consult about their interests and ours.

The grievance is this. The decisions of the Judges, except as to the plaintiff and defendant, are at present mere air. This air passes through twenty different trumpets, and gives twenty different sounds. There is a diversity of reports of every case, and there is no authority for any one of those twenty. Where, as in ninety-nine cases out of a hundred, the Judges give verbal judgments, a strong phalanx of legal gentlemen each makes his note of that judgment, and these notes all differ from each other. All these are printed in serials more or less elaborate and dilatory or rapid and superficial, and when they come to be quoted as precedents the Judges make no ceremony of disavowing any which they dislike and protecting their own consistency at the sacrifice of the reporter. This produces not only unseemly discussions between Bar and Bench, but also great uncertainty in the rights of persons. Just as the Monte Testaccio at Rome is made up of pieces of worthless potsherd, the remnants of the broken utensils of many generations, so our mound of modern English law is made up much less of hard, rocky statute law than of the refuse remains of the broken jars cast into heaps by our ancestors. The modern Romans dig wine caves in their mountain of potsherds, and enjoy themselves in the groves at its base. We should be glad also if we could get a useful modern code and hand over our dustheap of old potsherd precedents to other uses. But this is hopeless, and as we are constrained to be ruled by "case law," we ought to take some rational precaution, not only that our potsherds should be brought to the heap with honesty and impartiality, but also that they be of the proper material. As to honesty and impartiality, we believe there is very little now to be said on this score against the present system. It is, in fact, a merit of this system that it produces by publicity and competition a fair assurance of impartiality. Against oppression on the part of Judges the reporters for the public press are perhaps a sufficient protection; but to bad law arising from carelessness, or ignorance, or prejudice, the white-wigged recorders who sit in rows beneath the Judge—his critics as well as his recorders—are a severe discouragement. To a single official reporter there might be private intimations given that a particular case had better be passed over. It is notorious that in former days such intimations have been given, and that cases carelessly decided were simply left out of the books. Such a suggestion can hardly be made to a competing chorus of observant lawyers. We hope that this point of view will not be neglected when the merits and demerits of an open system of reporting are canvassed, for it must not be forgotten that if the class of professional legal reporters were

extinguished, the great bulk of merely technical questions would be decided almost in private. Go into any of our Courts during term time, except perhaps on motion days, and you will find very few persons there beyond the Judges and the counsel immediately engaged, except two classes of reporters—the newspaper reporters watching for cases of public interest, and the barrister reporters, watching for points of law. Take the latter away, and you take away a great pressure of professional criticism. These men do public service. We do not say this merely with a view to recommend the continuance of the present system, but to remind the Bar—justly and sorely complaining of the costliness of their reports—that the considerations of public utility are not entirely on one side of this question.

The remedy for the uncertainty of the law, so far as it arises from the uncertainty of foregone decisions, has been much discussed. Mr. Daniel and Mr. Pulling, both experienced men, have ventilated the subject in pamphlets and speeches, and the Law Amendment Society has had much to say upon it. Mr. Pulling proposes to recur to what there is good reason to suppose was in very early times the practice, and to insist upon a written judgment entered upon the record in every case when a judgment *in banc* has been given. How far the Judges would be disposed to undertake this additional labour we cannot, of course, even speculate; but it seems to be a very reasonable requirement that a judgment upon a legal question should be put into writing by the Judge who pronounces it. The most careful Judges are in the habit at present of committing their judgments to writing before they pronounce them, and upon very important cases the judgment is always written. If this were done in every case decided *in banc*, we should have authoritative decisions which could be published at reasonable cost, and upon which every one would rely. The present reporters would probably find employment in preparing these judgments for the press, with a *précis* of the pleadings, and perhaps with a summary of the arguments of counsel. A system based upon these suggestions might answer, but we confess we have great doubts of any scheme which involves an authorized Board of Reporters, and the rigid exclusion of all judicial *dicta* which have not received the approval of that Board.—*The Times*, Wednesday, December 2, 1863.

The Attorney-General, of course, looked to me to prepare beforehand the resolutions to be proposed, and the persons to move and second them. To do this properly required much assistance from my professional brethren, and that was willingly afforded me. My chief anxiety was to obtain the consent of proper persons, that is, persons who would be approved by the

Profession, to act as members of the Committee, to whom, if the principle of amendment were adopted, it would be referred to prepare a scheme for amendment, to be afterwards submitted to and approved of by the Bar. I was anxious to obtain the consent of Mr. Serjeant Pulling to act on this committee, and succeeded in obtaining his consent just before the Attorney-General went into the Hall to take the chair. I had already obtained the consent of all the others.

The Committee was intended to consist of twenty-one members only; but during the meeting a proposal was made to add the Hon. Mr. Denman, Q.C. (now Mr. Justice Denman), making the number twenty-two, and this proposal was at once adopted. Some amendments were moved to the first resolution, but they were all negatived by show of hands, and all the resolutions were carried by a large majority.

The following is a succinct but accurate report of the proceedings of the meeting:—

At a general meeting of the Bar held in Lincoln's Inn Hall, on Wednesday, the 2nd day of December, 1863, Sir Roundell Palmer, Knt., M.P., Her Majesty's Attorney-General, presiding—

On the motion of W. T. S. Daniel, Esq., Q.C., seconded by Sir FitzRoy Kelly, Knt., Q.C., M.P., it was resolved:—

1st.—That in the opinion of this meeting the present system of preparing, editing, and publishing reports of judicial decisions in this country requires amendment.

On the motion of Sir Hugh M. Cairns, Knt., Q.C., M.P., seconded by Richard Malins, Esq., Q.C., M.P., it was resolved:—

2nd.—That a Committee be appointed to prepare a plan for the amendment of the present system of preparing, editing and publishing reports of judicial decisions, and to report thereon to a future meeting of the Bar.

On the motion of Arthur Hobhouse, Esq., Q.C., seconded by G. Osborne Morgan, Esq., it was resolved:—

3rd.—That such Committee consist of the following twenty-two members of the Bar, namely:—

Sir R. P. Collier, Knt., M.P., Solicitor-General.
Sir Robert Phillimore, Knt., Queen's Advocate.
Sir FitzRoy Kelly, Knt., Q.C., M.P.

W. T. S. Daniel, Esq., Q.C.
Montague E. Smith, Esq., Q.C., M.P.
C. Jasper Selwyn, Esq., Q.C., M.P.
Sir Hugh M. Cairns, Knt., Q.C., M.P.
R. Paul Amphlett, Esq., Q.C.

The Hon. George Denman, Q.C., M.P.

George Mellish, Esq., Q.C.

James Dickinson, Esq.

Joshua Williams, Esq.

George Sweet, Esq.

Alexander Pulling, Esq.

George Druce, Esq.

G. W. Hastings, Esq.

Henry Matthews, Esq.

Nathaniel Lindley, Esq.

J. R. Quain, Esq.

Alfred Wills, Esq.

John Westlake, Esq.

F. Vaughan Hawkins, Esq.

And that of these, seven be a quorum.

In the interval, I believe, between the publication of my letter to Sir Roundell Palmer of the 12th of September and this meeting of the Bar on the 2nd of December, 1863, or about that time, Mr. Serjeant Pulling, whose active interest in the discovery of a remedy by means of some State-aided or State-supported system of Law Reporting never flagged, and is eminently worthy of public recognition, published a pamphlet expounding his views on the subject, in harmony with, though slightly varying in detail from, the plan suggested in the 1853 Report of the Law Amendment Society, with the merits of which he claims, and is justly entitled, to be credited. The Serjeant was so kind as to send me a copy of this pamphlet, which I feel myself bound to do him the justice of reprinting—*in extenso*. And I desire to express my sense of obligation to the Serjeant for his liberality in recognising some feature of merit in my scheme, though differing in principle so radically from his own, as shewn by the passage in italics, p. 89.

OUR LAW-REPORTING SYSTEM,

CANNOT ITS EVILS BE PREVENTED?

THE question of a reform of our present defective system of Law Reporting we may at length hope will be taken into consideration by those having the will and power to deal with it effectually.

The views of anyone who has earnestly given attention to the subject before it became a popular topic may at this moment be worth publishing. Hence the appearance of what follows.

The author, having written on the evils of our Law-Reporting system upwards of twenty years ago, and subsequently on more than one occasion called public attention to the questions involved in it, through the medium of the "Society for the Amendment of the Law" (1),

(1) The subject of Law Reporting was first brought before the Law Amendment Society in 1849, and in that year an elaborate Report drawn by the present writer was adopted by the Society. The subject was again renewed in 1853, when a further Report containing some suggestions for a remedy was

takes this opportunity as well of referring to what has been thus already published, as of explaining more in detail how, in his opinion, an effective remedy may be provided without producing any commensurate inconvenience.

Strange as it may appear, it is nevertheless true that our law now makes no provision for the ordinary proceedings, or indeed the actual decisions, of our superior Courts being really recorded at all.

The daily proceedings of each branch of the Legislature are formally entered on the *journals*, and the Magistrates and Judges of inferior Courts are compelled to keep authentic notes of their proceedings, for the Courts at Westminster have legally the control over them; and on a *certiorari* issuing to bring up such proceedings for supervision, authentic notes of them are indispensable. The precautions against inaccuracy, however, which Parliament adheres to in its own proceedings—the duties which our superior Courts practically prescribe for inferior tribunals—are in a great degree lost sight of in Westminster Hall. No journal or register exists of what there takes place *from day to day*; no authentic record whatever is preserved of the great majority of the cases in which formal applications for redress are unsuccessful; and even in cases where a *record* is preserved, the files of the Court afford no clue to the real merits of the proceedings.

The record of a judgment in an ordinary action at common law contains a meagre entry of the names of the parties, of the *formulas* which have been adopted for raising the *issues*, of the finding of such issues by the jury, and of the bare fact of the award of the judgment in favour of the plaintiff or the defendant. Of the essential merits of the case decided on, or of the facts, the grounds and reasons of the decision, there is *no authentic entry*. Notes of the actual facts proved, of the points of law raised or intended to be raised, of the arguments *pro* and *con.*, of the ruling of the Judges and the grounds and reasons on which they are based, may or may not be taken at all, or taken with accuracy, or communicated to the public when taken. In practice, it is left to the discretion of each Judge to enter such notes in his own memorandum-book before or after he has adjudged the case; or either or all the parties or counsel engaged may keep notes, giving their own version of the matter. Beyond this it depends wholly on voluntary reporters, who may be in waiting, to preserve any record

adopted. To these two Reports (now out of print, though copies are preserved among the records of the Society), and to the extracts and quotations contained in them, the reader is referred for the first version of much that has been since written on the subject. The writer therefore deems it better, when reiterating what has already appeared in those Reports, to incorporate the substance with that which now appears here for the first time, rather than lengthen the pamphlet by reprinting the papers referred to, or even by continual references to, and quotation from what has been thus already published.

of them, and to exercise absolute discretion (having regard to their own interests) in selecting what shall and what shall not be made public.

Though the system of our Courts of Equity admits of a more detailed statement of the facts in the formal proceedings, yet the order or decree gives only the mandate of the judge, and the whole record hardly discloses more of the grounds of any decision than the meagre record of a common law action. Lucid and conclusive as the judicial sentence may be, the grounds and reasons on which it is based are nowhere authentically registered. Precedents in our Equity Courts, as in our Courts of Common Law, are cited only from the published volumes of voluntary reporters.

These defects in the mode of recording our judicial sentences are the more remarkable when we consider the great solemnity and weight which attach to them. The judgments and decrees pronounced on both sides of Westminster Hall affect not only the immediate litigants, but, indirectly, all the Queen's subjects. As precedents, they become constituent elements of our system of law (1). On these almost alone is founded the larger portion of our Commercial Code; and there is indeed hardly any branch of our jurisprudence which may not be said to be based upon them, for such solemn expositions of the law, like the *constitutions* which arose from a complete examination and judicial sentence of the Supreme Court under the Roman emperors, are adopted into and become a part of our general law, of which all must take notice (2).

It has ever been the boast of our judicial system that all cases of difficulty in Westminster Hall "*cognitionaliter examinantur*"—that they are not adjudged or resolved "*in tenebris* or *sub silentio suppressis rationibus*" (3); but in open Court, after full argument, the judges declaring the authorities, grounds, and reasons of their decisions (4).

When the Court has thus solemnly disposed of any question in litigation, an authentic record of the actual result, and of the grounds of the decision, seems essential to the cause of justice, as well for the protection of those immediately affected, who may desire to appeal from the decision pronounced, as for the larger number who may be bound by such a solemn exposition of the law.

If the litigant who excepts to the ruling of the Judges has no

(1) See as to this Hale's "History of the Common Law," c. 4.

(2) 1 Bl. Com. 71, and a host of authorities and dicta of our Judges, quoted in the masterly speech of Lord Chancellor Westbury on the Revision of the Law, June 12, 1863.

(3) Si imperialis majestas causam cognitionaliter examinaverit et partibus cominus constitutis sententiam dixerit, omnes omnino Judices qui sub nostro imperio sunt, sciant hanc esse legem, non solum illi causæ pro qua producta est, sed et in omnibus similibus. C. 1. 14. 12.

(4) Preface to 9 Coke, Rep. xiv.

certain record to refer to, in order to rest his case on, when appealing from the decision—if the rulings of the Courts in Westminster Hall are to settle the law by which all of us are bound—it can hardly be said that an authentic record of all that is material in such decisions is not as much a necessity as the formal entry of the mere award of judgment, or an authentic version of the Acts of the Legislature.

The practice of confining the records of our judicial proceedings to entries of the formal pleadings, and of the mere award of judgment, seems to a great extent to be a prejudicial innovation on the more prudent precautions of a less civilised age. Time, which has improved our general system of jurisprudence, has very far from matured the practice of administering it. To *record* judicial proceedings was, in ancient times, to preserve the memory of the substance. The record at this day is for the most part the mere wrapper with which the substantial question was enveloped when under the consideration of the Court. *Recorders*, in the simple age of our unlettered forefathers, were those whose province it was to attend in Court, and note what was said and done, in order to remember or *record* the same for the security, as well of the immediate parties to the proceedings, as of that far more numerous class who had subsequently to ascertain how the law, on any particular matter, had been solemnly expounded (1).

As the records of our Courts came to be preserved in writing, the entry seems to have contained a summary of the very substance of the proceedings, and in all cases of difficulty the grounds and reasons of the decisions were set out (2). The practice of officially entering on

(1) Some vestiges of these very ancient duties of *Recorders* are to be traced in the practice of the Recorder of the city of London, orally certifying the customary law of the City: the presence of that learned functionary being always indispensable in the ancient civic Courts, in order to record pleas and judgments, though he was not the Judge.

(2) Bracton is profuse in his quotations from the actual Rolls of the Courts to prove the way in which the law had been judicially expounded. "Fitzherbert's Abridgement" of judicial decisions, tem. Henry III., and subsequently before the time of the *Year Books*, it is remarked by a learned writer, can be looked on only as notes framed from the actual enrolments to which Fitzherbert had access. See Mr. Horwood's preface to the authorized edition of the *Year Books* of Edward I. just published.

In Margaret Weyland's case, which is given at length in the first volume of the *Rolls of Parliament*, 19 Edward I. no. 1, m. 12, it is formally entered on the Record that the rolls of the Justices in Eyre and de Banco were to be searched for precedents, "*quia casus consimilis nunquam antea evenit.*" Scanty as the entries on our ancient records were, they appear when necessary to have always disclosed the substantial question in the case, and the grounds of the decision. Lord Coke refers to a number of such records in which this might particularly be observed. See references in marginal notes to 4 Inst. 4., and the diligent

the record the grounds and reasons of the judgment seems to have been gradually discontinued, and in the time of Edward III. (1) to have wholly ceased. As one of the evils which we have inherited with an extremely technical system of special pleading may be counted that of causing our judicial records to disclose the forms only, and not the substance, of the matters adjudicated.

Of the why and wherefore of the decisions, even when founded on principles judicially expounded for the first time, as little in the majority of cases can be gathered from the record as from the mandates of an Eastern Cadi, and if we take the great majority of our leading cases which are given in our books of reports, and compare them with the actual records, Sir William Blackstone's notion of the one being an *index of the other* will be seen to have a very slight foundation. The innovation of omitting from the entry on the record of solemn judgments of the grounds and reasons on which they are founded is often referred to by our older text writers. Lord Coke, in speaking of "the Records of Parliament," observes (2):—

"The reason wherefore the Records of Parliament have been so highly extolled is, for that therein is set down, in cases of difficulty, not only the judgment, or resolution, but the reasons and causes of the same by so great advice. It is true that of ancient time, in judgments of the Common Law, in cases of difficulty, either criminal or civil, the reasons and causes of the judgments were set down in the record; and so it continued in the reigns of Edward I. and most part of Edward II., and then there was no need of reports; but in the reign of Edward III. (when the law was in his height), the causes and reasons of judgments, in respect of the multitude of them, are not set down in the record, but then the great casuists and reporters of cases (certain grave and sad men) published the cases and the reasons and causes of the judgments or resolutions which from the beginning of the reign of Edward III. and since we have in print. But these also, though of great credit and excellent use in their kind, yet far underneath the authority of the Parliament rolls, reporting the Acts, judgments, and resolutions of that highest Court."

The growth of our present Law Reporting system—if system it can fairly be called—has been often described. Lord Coke, in the passage just quoted, glances at the mode in which it was first introduced.

reader may see many remarkable instances of this in the earlier portion of the *Abbreviatio Placitorum*. Sir William Blackstone, who is the apologist of our system even when pointing out its defects, speaks of the reports "as serving for *indexes* to, and also to explain, the records." (1 Bl. Com. 71)

(1) In the Court of Chancery the Registrar's books contained entries of the grounds and reasons of decrees and orders up to a much later period.

(2) 4 Inst. 4.

Sir William Blackstone states that the *Year Books* were compiled by the Prothonotaries (1); whether this was so or not, they seem clearly to have been official compilations, and according to Plowden (2), the preparation of these was entrusted to four Reporters duly chosen and appointed by the Crown, who used to confer all together as to the making and publishing them. But since the reign of Henry VIII., when the appointment of official Reporters ceased, the work of reporting the points of law involved in our judicial decisions has been abandoned to mere volunteers, with what consequences to the community a glance at the present state of our Law Reports will best explain.

If among the *many* hundred distinct volumes which the reported decisions of Westminster Hall are spread over—added to each year at an increasing rate—there are the laboured productions of accurate, learned, and trustworthy lawyers; if haply we can find among these volumes instances where all that ought to be reported is given and no more, will any practising barrister hesitate as to the fact, that in a large number of the so-called "Reports" the greatest defects are to be found? A century ago we find complaints made of reports made through haste, inaccuracy, or want of skill, containing *crude, imperfect, perhaps contradictory accounts of one and the same determination* (3). Is it without reason that charges have since been made of equal if not greater defects?

As the proceedings of our Courts are nowhere authentically recorded, reports of them may be given by any who choose to give their version of them; and various and conflicting accounts of their proceedings are contained in publications of a great variety of character: the elaborate series expensively printed and published by the law booksellers, the rival series competing in price and in the number of cases given and the more expeditious and less elaborate reports contained in the legal periodicals. Each of these publications would at this day be cited as an *authority* before the Courts. Vying with one another in containing as many various recommendations as possible, many of our law reports at this day contain not only the actual decision and all that is necessary to make it intelligible; but the forms, the pleadings, &c., the arguments of counsel, pro and con., and the *obiter dicta* of the various Judges in disposing of the fallacies put forth in argument. These may be, and no doubt are, useful for the various purposes of practitioners, but they are altogether *de trop* as records of the substantial question decided.

(1) 1 Bl. Com. 72.

(2) Preface to Commentaries or Reports, p. iv.; and see Sir Harbottle Grimstone's preface to Croke's *James*.

(3) 1 Bl. Com. 72.

The published reports at present often give different and sometimes contradictory versions of the same case, but even when they seem in great part formed from one another, we find the Judges disclaiming them altogether as inaccurate (1). However, as there is no distinction between what is authentic and what is not so, our Courts at present are driven to rely on them, or even on notes of cases published in text-books, or legal newspapers, with matter wholly extrinsic, or published years after the date of the decision (2). Nay, there is no law or practice which prevents the manuscript note of a decision taken by any diletante member of the Bar being cited as an authority to upset what was before deemed to be the law. "If," as well observed in one of our best text-writers, "conclusions from unquestionable principles are to be overthrown in the last stage of a suit by private memoranda, who can hope to become acquainted with the laws of England? and who that retains any portion of rationality would waste his time and his talents in so fruitless an attempt? Is a paper evidencing the law of England to be buttoned up in the side-pocket of a Judge, or to serve for a mouse to sit upon in the dusty corner of a private library? If the law of England is to be deduced from adjudged cases, *let the reports of those adjudged cases be certain, known, and authenticated* (3)

Is there no mode of preventing these evils? no way of securing this certainty, publicity, and authenticity to the reports of the decisions of our Judges?

Why should not our superior Courts of Law and Equity, like the

(1) "The Law Review" for Feb., 1848, gives a long list of cases cited from the published reports of the preceding year, in which the Judges disclaimed as incorrect, inaccurate, or false, what they were there reported to have said or decided.

(2) Lord St. Leonards, in the preface to his Treatise on the Law of Property as administered in the House of Lords, only published in 1849, observes that—"Whilst at the Bar the author retained all the printed cases on appeals in which he was counsel, with his own notes and the notes of the argument. From this source, principally, he has been enabled to add the cases *not at present reported, between 1821 and 1826.*"

In the important proceedings relating to the *Alexandra*, at this moment pending in the Court of Exchequer, the only judicial decision referred to on the construction of the Foreign Enlistment Act was one by the late Mr. Justice Coltman, fourteen years ago—and of this no other than a newspaper report could be found. The Court, after vain efforts to obtain a note of the decision made by any Judge, barrister, or short-hand writer, was compelled to resort to a subterfuge to avoid infringing the rule against receiving newspaper reports as authorities, by asking Mr. Baron Martin, who had been engaged as counsel in the case, to refer to *The Times* of July 6, 1849, and, after thus refreshing his memory, to say whether the decision there reported was pronounced. See *The Times*, November 12, 1863.

(3) Preface to Watkins' Conveyancing.

Houses of Parliament, have authentic journals preserved *of all their proceedings*? At this day we have every facility afforded for such a desideratum. The whole time occupied by the sittings of the superior Courts in Banco does not average half the time of the sittings of the Legislature. By the aid of efficient short-hand writers, whose services could be secured at a very moderate expense, and a selection from the number of gentlemen who, under the present practice, assiduously attend to take notes of the proceedings, these journals might be accurately prepared day by day, and duly entered up as soon as practicable, so as to give an authentic version of what has taken place in the natural order in which it should come, *according to date* (1).

By a few salutary rules for the guidance of the Recorders or Registrars, the *journals* might easily be made to contain, neither in too diffuse or too obscure a form, all that was required to give with the written documents on the files of the Court a complete record of the substance of each case, and of the ruling or decision of the Judges upon it. Let copies or extracts from these journals be supplied at a fixed price to all who might require to use them, and such copies duly sealed be received as authentic.

Such an authentic version of the proceedings of our Courts would go far, not only to secure accuracy in the reports of cases subsequently published, but to put a stop to disputes which too often now occur in particular cases as to what was said or decided in a previous stage of the cause.

Should the course here suggested be adopted, the subject of *Law Reporting* would really be easy to deal with. Let a sufficient number of competent men be appointed to select from the *journals* cases, which containing a new exposition of the law, ought fairly to be published as *precedents* for future guidance. Let these *reports* be received as authorized versions of the cases therein reported. Let any one before the *precedents* were published, cite the journals, producing authentic extracts from them; but let no report be received as an *authority* in our Courts which was not vouched in one or the other of these modes. Let all this be well carried out, and the difficulties which now beset the question of reforming our system of Law Reporting will at once vanish. *Can it not be well carried out*, and will any serious practical inconvenience arise from the change?

If the selection of persons fitted for the work of recording and registering the proceedings of our Courts, and publishing authentic versions of those cases which affect the general administration of justice, were left to the Lord Chancellor, or even to a Board composed

(1) The sittings of the Common Law Courts in and out of term, and including the sittings in error, never occupy more than one hundred days in the year.

of members of the Bench and the Bar, there can be little fear that the work would be effectually done. There are among the body of gentlemen at present engaged in the business of Law Reporting, more than enough to be found able and willing to do the work proposed effectually, if appointed; and it can hardly be assumed that gentlemen so authorized would be more likely to neglect their duty than when deriving their appointment from law booksellers. Security should of course be afforded for preserving them from any undue influence, and for discharging those who became inefficient, inaccurate, or inattentive. *Whether such a supervision might be effected by a Council of Benchers of the Inns of Court, as proposed by Mr. Daniel, deserves consideration.*

Assuming the practicability of such an appointment of persons fully efficient to record the proceedings of our Superior Courts, and subsequently publishing the Law Reports, will there be any difficulty on the ground of expense?

This objection is one which it is right to deal with, but nevertheless it must be borne in mind that as it concerns the State to record and promulgate the law laid down by our Judges equally with that prescribed by the Legislature, if the cost were a serious consideration, this practically forms but a very slight element in the question, particularly when we are told that there is at present an available fund in the surplus fees of the Courts over and above what is required to pay the salaries charged upon them.

The whole cost of such an establishment as is here suggested, and of printing and publishing sufficient copies of the authentic reports for the use of the whole legal profession, would be far less than that which the Profession at this day incur for supporting the present very objectionable system (1). Looking to the fact that a large number of the Law and Equity Reports are even now directly required for the public service at home and in the colonies, the legitimate demand for authentic reports would be large enough to cover the whole cost of providing them.

It remains to say a word on the subject of the *vested interests* in the present publications in use by the Profession as *Law Reports*.

Were an authentic system of Law Reporting established, so as to

(1) Some statistics given in the Reports of the Law Amendment Society already referred to will easily make out this. If the publications here suggested were to be sold at £3 a year, *the revenue from the sale alone would be ample to pay all the expenses.*

The number of practising barristers and solicitors who now pay dearly for the present reports, and would gladly be taxed at £3 for the authentic series, exceeds 10,000; whilst the persons who as Judges and legal officials in the Queen's dominions ought to be supplied with them at the cost of the State are at least 1000, so that a revenue from the sale alone might be looked to of £33,000 per annum.

preclude any but the authorized versions being received as authentic in our Courts, there might still remain ample room for some of the present publications,

The Law Reports proposed containing *only the case as actually decided*, the periodicals which should give the speeches of counsel, the *obiter dicta* of the Judges, the forms of pleading used, &c., would still be a desideratum by many who might thereby derive valuable information. Again, a republication from the authorized cases, of cases with notes, or of those which related only to one subject, as Criminal Law, Magistrate's Law, &c., might even find more subscribers than they get at present. Be this as it may, however, the question of *vested interest* is not likely to be urged with any success with respect to the very important matter now under consideration. If the improvement proposed is to be recommended on public grounds, vested interests in the system to be superseded can only be regarded as vested interests in a great abuse.

"The Times," on the 3rd of December, 1863, made the following comments on the result of the meeting :—

The resolution which was carried yesterday by a large majority at a crowded meeting of the Bar embodies a statement which has long been recognised as a truism by the profession and the public. To say of a system which leaves one branch of our law to be shaped by irresponsible Reporters, and provides no authentic register of decisions affecting the rights of every British subject, that it "requires amendment," is to affirm what is self-evident. Many may think that too much weight is attached to precedents, and that it would be far better if our tribunals were no longer absolutely bound by them. There are but few principles of the Common Law that have not found their way into statutes, and if an authoritative digest of these were compiled, modern Judges might still be guided, without being fettered, by the opinions of their predecessors. This, however, is not the present question. The question is whether, assuming that the series of cases mis-called "our unwritten law" is to remain uncoded and undigested, some adequate security ought not to be taken for their being reported properly. Hitherto no such security has been found, or even sought in earnest, since the Year-books were discontinued in the reign of Henry VIII. A partial and futile effort of Lord Bacon to procure an official record of case-law, and constant expressions of vain regret from our great lawyers, beginning with Coke, are the only traces of a disposition to confer this great boon on the nation. We are told that ignorance of the law is no excuse for any Englishman, and yet it is a fact, not only that we may be crushed with obscure precedents gleaned up and down many hundred volumes, but that the most recent have to be

verified by a comparison of several different versions. For a proof of the inconvenience and injury to the interests of justice that may arise from discrepancies in reporting, we need not go further back than the case of the "Alexandra," although it was the published notes of the shorthand writer that were there impugned. The disputes that may occur now and then on the motion for a new trial, for want of certainty as to the language employed by the Judge, are however, trifling compared with the permanent evil of having no Reports of conclusive authority. It is somewhat hard that the mischief of an evil precedent, once established, can be annulled by the Legislature alone, but it is monstrous that so fatal a power should belong to a precedent which may have been incorrectly reported after all.

This is the main abuse with which Mr. Daniel calls upon the legal profession to deal. He traces the history of judge-made law from the earliest times, shewing how the Year-books were succeeded by a period of "loose" reporting, loose reporting by a close licensing system, the licensing system by a privileged monopoly, and monopoly by open competition between "regular" Reporters, legal serials, and newspapers. The only value of this historical sketch is to shew that we have tried every way, except the best one, and have failed to obtain what we have a right to insist upon. At this moment we have six sets of Reports competing with each other, none of which can be quoted as a final standard of reference, and all of which can be quoted as evidence on the point decided. Mr. Denman argues that this multiplicity of Reports is the best guarantee for accuracy, and the best corrective for the tendency of Judges to qualify what they have themselves laid down. But surely these two objects would be more directly attained if one transcript of the judgment were deliberately made by responsible persons from their own notes, checked as they would still be by the trustworthy, though unauthorized, testimony of private Reporters. Members of the Bar, and the public generally, would then know where to find the doctrines upon which the fate of future lawsuits may depend. As it is, the omission of a material element in the case, or the confusion of an *obiturn dictum* with the *ratio decidendi*, may entirely vitiate the value of a precedent as preserved in a particular Report, which may have been prepared in the utmost haste for a weekly or monthly periodical. The only remedy for this is the collation of it with other Reports of the same fugitive kind, and with those which come out—sometimes years afterwards—with a certain official *prestige* and under the names of their authors, though not always with any paramount claim to respect. Granting that the exact significance of the decision can be elicited in this way, the process is enormously dilatory and expensive. It is dilatory, because

the Reporters, out of a natural anxiety to omit nothing which others insert, crowd their pages with cases which prove nothing, and details which do not elucidate the cases. It is expensive, because it involves taking in or getting access to six publications instead of one, the price of this last being enhanced by the very diminution of its circulation owing to the opposition of its rivals. When we add that even the Reports which are called "regular" are under no uniform system of management, are compiled on different principles, are issued at uncertain intervals, and possess no judicial sanction, although they are often corrected by the Judges, we have said enough to recommend Mr. Daniel's resolution to the common sense of our readers.

The next question, and, indeed, the only one that admits of serious controversy, is, what is to be done? We might evade this, as the meeting evaded it, by throwing it upon the committee of eminent lawyers just appointed. Perhaps, however, the problem is one which would appear more formidable to a professional than to an ordinary mind. In the first place, there is really no reason why the appointment of an "official," or, as we should prefer to call him, a responsible, Reporter for each Court should exclude the class whose interests are supposed to be adverse to change. It would be the duty of this gentleman, out of whatever fund he might be paid, to select and reduce to a succinct form those cases, and those only, which involve important matters of law. This would take some little time; and meanwhile the curiosity of the public and the profession would create a demand for ampler and fresher accounts of legal proceedings. In the great majority of the cases contemplated written judgments are even now pronounced, and the responsible Reporter would have nothing to do but to embody them, as is now done. The chief difference would be that he would be bound to produce the results of his labours with much greater despatch than at present, and that the Judges would revise their own words while they were still fresh in their memories. No doubt it would be an essential feature of this system that no other Report could be cited as conclusive; but the Bench might still be enlightened by cases borrowed from non-official sources, as they now are by the extempore illustrations which counsel frequently offer from their own experience. Something like this practice has been adopted in Parliament, and there are no apparent objections to its application in Courts of Law. It would not involve of necessity the principle that the Judge should be virtually his own Reporter where the judgment is oral, for the reporting body might be made independent of the Judicature. These are essentially difficulties of detail, and such as the leaders of the legal profession, in concert with the Bench, might easily overcome. What the public

and the working members of the Bar may fairly expect is an accessible and sufficient record, at a reasonable cost and within a reasonable time, of the law which the Judges are always making, though by a legal fiction they are said to declare it, and which thenceforth becomes binding upon all. Whether this record should be prepared under State sanction or under judicial sanction, and how far private enterprise should be encouraged at the same time, it is for the committee to consider.

In the "Morning Advertiser" of the 5th of December, 1863, there appeared a letter addressed to the Attorney-General and sent to the "Morning Advertiser" for publication. This letter is of interest, as shewing that the outside public began to appreciate the importance of the proceedings of the Bar, and the value of the services rendered by the Attorney-General.

THE SUBJECT OF LAW REPORTING.

[The following letter to Sir Roundell Palmer, Attorney-General, on the subject of Law Reporting, has been transmitted to us for publication by one of our ablest Correspondents.—ED. M. A.]

SIR,—It is not probable that you will permit the interested opposition of a minority, however large, to defeat your proposal of an amendment to the present system of Law Reporting; and it is the duty of all who are able to assist you in carrying out a reform of which it is not too much to say that it is by far the most important Law Reform for the benefit of the public which has ever been proposed; and should put to shame the members of the "Law Amendment Society," who must have known the evil, but wanted the moral courage to propose a remedy which was certain of severe opposition from those lawyers who fancy they have a personal interest in continuing a system of which it may be truly said, that if it was intended to render the law ambiguous and expensive, it has assuredly succeeded in effecting that object.

Many years have elapsed since I was indebted to you for the recovery of a very large sum of money, and gratitude has been my principal motive in addressing to you this letter, detailing a plan by which your reform may be most easily carried out, and, as I believe, without the slightest injury to those newspapers which the legal profession will always support on account of their intrinsic merit. As to those things which are called Reports, the principal object of the parties who publish them is, not to furnish the public with the best

possible account of the decisions of the Judges, but to put money in their own pockets ; and as to their cry about your proposed reform being a monopoly, there cannot be in truth a more stringent monopoly than the present system. If any one doubts this, let him attempt to set up as a Law Reporter in any of our Courts, and, however well qualified he may be, he will find it an impossibility. To chatter of the freedom of the present system is nothing more or less than a plagiary on the well-known aphorism of Horne Tooke—"that the London Tavern was open to all."

There are two classes of decisions to be dealt with :—

First. Those on very important subjects, wherein the Court takes time to deliver its judgment.

Second. Those on which the Judges decide as soon as the counsel on both sides have concluded.

As a rule, to which of course there would be many exceptions, it is the first class of which both the public and lawyers desire to have the most accurate reports. And assuredly nothing can be more easy ; it would be merely to require that such decisions should be given from a written document which should immediately after delivery be handed to an officer of the Court to be kept as a record, which might always be had by any one choosing to pay for a copy. Now this would clearly satisfy one part of what is desired, and would also have the great utility of preventing Judges indulging in similar twaddle to that of which the Alexandra case is the last instance.

But it is not all that is necessary ; for both the public and lawyers have a right to know what principles the Judges have decided ; and for this purpose I would propose that in each Court an officer should be appointed who should on each Saturday publish a condensed summary of every judgment pronounced in his Court the preceding week—this condensed summary being, in fact, little if anything more than the marginal notes at present accompanying each report ; and it is clear to my mind that such summary of the judgments in all the Courts would not occupy more than a few pages.

This is all the lawyer would require ; for when he wished for full information of the reasons for such decision, he would desire his client to procure a copy of such and such judgments, and then he could say how the case before him was affected by them.

There are many ways of meeting the second class of judgments, namely, those which are delivered after counsel have concluded. I think the best way would be, to leave such cases entirely in the hands of the Judges, and let them decide in any case before them whether it embraces points, either of principle or practice, on which it would be useful the public and the profession should be informed ;

and in such cases he would merely have to say, I will give judgment to morrow morning. This he would do from a written document, which would be immediately treated as in the first case.

I have the honour to remain, Sir,

Your obedient and faithful servant,

AN OBLIGED CLIENT.

The Morning Advertiser.—Dec. 4, 1863.

Thus far success had attended the efforts of the Profession, and I began to feel there was some truth in what I had learned at school :—

"Dimidium facti, qui cœpit, habet."

THIRD DIVISION.

The steps taken after the 2nd of December, 1863, and up to the 28th of November, 1864, the day on which the third meeting of the Bar was held.

THE first meeting of the Bar Committee appointed at the meeting of the 2nd of December, 1863, was held on the 22nd of December following. The meeting was held in the Benchers' Reading Room, in Lincoln's Inn. This room had been kindly granted by the Society for the purpose, and all the subsequent meetings of the Committee were held in the same room; and by the liberality of the Bench of Lincoln's Inn was thus used without charge.

As I had been permitted to take a prominent part in the proceedings at the Bar Meeting which had resulted in the appointment of the Committee, it was expected that I should take whatever steps might be necessary for bringing the Committee together with a view to their proceeding to discharge the duty entrusted to them, and which they had undertaken. I therefore gave notice to each of the twenty-two members that the first meeting would be held on the 22nd of December, at the Benchers' Reading Room in Lincoln's Inn—having previously ascertained that that day would be generally convenient, and that the Benchers were willing to allow the room to be used for the purpose. The meeting was held accordingly, and the following fifteen members attended, and as entered in the minutes were as follows:

| | |
|--------------------------|--------------------|
| W. T. S. Daniel, Q.C. | Geo. Druce |
| C. J. Selwyn, Q.C., M.P. | G. W. Hastings |
| R. P. Amphlett, Q.C. | Henry Matthews |
| Geo. Mellish, Q.C. | Nathl. Lindley |
| James Dickinson | Alfred Wills |
| Joshua Williams | John Westlake |
| Geo. Sweet | F. Vaughan Hawkins |
| Alex. Pulling | |

The absent members were Sir R. P. Collier, Solicitor-General, Sir Robert Phillimore, Queen's Advocate, Sir FitzRoy Kelly,

Knt., Q.C., M.P., Montague E. Smith Esq. Q.C., M.P., Sir Hugh M. Cairns, Knt., Q.C., M.P., the Hon. Geo. Denman, Q.C., M.P., and J. R. Quain, Esq.

By the resolution appointing the Committee seven formed a quorum, and more than double that number having attended, the Committee were fully competent to proceed, and they proceeded accordingly.

Their first resolution, moved by me and seconded by Mr. Dickinson, was by a unanimous vote to appoint Mr. R. P. Amphlett permanent Chairman; and by a similar vote Mr. J. T. Hopwood, of Lincoln's Inn, Barrister, was appointed Hon. Secretary. The question of the appointment of another Secretary, to be selected from the Common Law Bar, was directed to stand over for the present; and Mr. Hopwood was requested and undertook to keep minutes of the proceedings of the Committee. The meeting was then adjourned to the 14th of January, 1864.

But I was requested, and undertook, in the meantime to prepare a draft circular stating the appointment and object of the Committee, to be sent to the Judges and Profession generally. The circular to be ready to be considered by the Committee at their meeting on the 14th of January next. I accordingly prepared a draft circular which was submitted to, and with some alteration approved by the meeting held on the 14th of January; and the following resolution was passed.

"That the circular prepared by Mr. Daniel, with the alterations made therein by the Committee, be printed; and that the Secretary be requested to send a copy to all Judges and ex-Judges of the House of Lords, Privy Council, and Superior Courts of Law and Equity, and all Barristers and Pleaders practising in London,—to the Incorporated Law Society, and the Metropolitan and Provincial Law Association, and such other persons as any member of the Committee or the Secretary should think desirable, accompanied by a letter stating that the Circular was sent at the request of the Committee, and that a meeting would be held on the 18th of February next to consider the answers to the circular."

The following are copies of the circular and letter:—

LAW REPORTING.

At a General Meeting of the Bar held in Lincoln's Inn Hall, on Wednesday, the 2nd day of December, 1863, Sir Roundell Palmer, Knt., M.P., Her Majesty's Attorney-General, presiding—

On the motion of W. T. S. Daniel, Esq., Q.C., seconded by Sir FitzRoy Kelly, Knt., Q.C., M.P., it was resolved :—

- 1st.—That in the opinion of this Meeting the present system of preparing, editing, and publishing Reports of Judicial Decisions in this country requires amendment.

On the motion of Sir Hugh M. Cairns, Knt., Q.C., M.P., seconded by Richard Malins, Esq., Q.C., M.P., it was resolved :—

- 2nd.—That a Committee be appointed to prepare a plan for the amendment of the present system of preparing, editing, and publishing Reports of Judicial Decisions, and to report thereon to a future Meeting of the Bar.

On the motion of Arthur Hobhouse, Esq., seconded by G. Osborne Morgan, Esq., it was resolved :—

- 3rd.—That such Committee consist of the following twenty-two Members of the Bar, namely :—

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|--|---|
| Sir R. P. Collier, Knt., M.P., Solicitor-General. | George Mellish, Esq., Q.C. James Dickinson, Esq. |
| Sir Robert Phillimore, Knt., Queen's Advocate. | Joshua Williams, Esq. George Sweet, Esq. |
| Sir FitzRoy Kelly, Knt., Q.C., M.P. | Alexander Pulling, Esq. |
| W. T. S. Daniel, Esq., Q.C. | George Druce, Esq. |
| Montague E. Smith, Esq., Q.C., M.P. | G. W. Hastings, Esq. Henry Matthews, Esq. |
| C. Jasper Selwyn, Esq., Q.C., M.P. | Nathaniel Lindley, Esq. |
| Sir Hugh M. Cairns, Knt., Q.C., M.P. | J. R. Quain, Esq. Alfred Wills, Esq. |
| R. Paul Amphlett, Esq., Q.C. | John Westlake, Esq. |
| The Hon. George Denman, Q.C., M.P. | F. Vaughan Hawkins, Esq. |

And that of these, seven be a quorum.

At the first Meeting of the Committee, held on the 22nd of December, 1863, Richard Paul Amphlett, Esq., Q.C., was unanimously appointed Permanent Chairman of the Committee.

The Committee thus appointed are anxious, in order the better to discharge the duty entrusted to them, to collect the opinion of the

profession upon the subject of Law Reporting; and for that purpose the Committee are desirous of receiving any observations which you, either alone or in conjunction with others, may be so obliging as to make upon what, in your opinion, are the advantages or disadvantages of the present system, and also any suggestions, either as to the principle or details of any amendment of the existing system which you may think desirable.

BENCHERS' READING ROOM,
LINCOLN'S INN HALL,
January 20th, 1864.

SIR,

At the request of the Committee recently appointed by the Bar to consider the present system of Law Reporting with a view to its amendment, I have the honour to submit for your consideration a circular which has been issued by the Committee, and to state that they would feel much indebted for any observations or suggestions which you may be pleased to make with reference to the important object of the circular.

The Committee will meet on Thursday the 18th of February next, to consider any suggestions with which they may have been favoured in the meantime.

I have the honour to be, Sir,
Your obedient servant,
JAMES T. HOPWOOD (*Hon. Sec.*)

Several thousands of the circular and letter were sent and distributed by the Hon. Secretary to and among the Judges and the profession.

At the same meeting it was also resolved that Mr. Denman, Mr. Matthew, Mr. Pulling, Mr. Quain, and Mr. Westlake be appointed a sub-Committee to inquire into the practice as to recording judicial decisions and reporting the grounds and reasons of such decisions in Foreign Countries, India, the Colonies, and Scotland, and to report thereon to the Committee. Such sub-Committee to have power to add to their numbers.

The sub-Committee undertook the duties confided to them and in due time made a carefully prepared and exhaustive report to the Committee, which is printed at length in a subsequent part of this volume (1).

It appearing that the duties of the Hon. Secretary were becoming

(1) See p. 148.

onerous, it was resolved at a meeting of the 28th of January, 1864, to appoint Mr. Wm. Dundas Gardiner, of Lincoln's Inn, Barrister-at-Law (he having volunteered his services) to act as Hon. Secretary jointly with Mr. Hopwood; and the question of the appointment of a Secretary from the Common Law Bar was allowed to stand over—no offer or proposal having hitherto been made with that object by any member of the Common Law Bar.

At meetings held on the 18th of February, the 25th of February, and the 3rd of March, 1864, communications from various individuals and Law Societies, amounting in all to seventy-four, including some from Lord St. Leonards, Mr. Justice Willes and Vice-Chancellor Wood (afterwards Lord Hatherley), had been received. All these had been carefully read by the chairman, Mr. Amphlett, and he had made a synopsis of them for the use of the Committee. And at the meeting on the 3rd of March, it was resolved that certain of the papers, which appeared to be representative of general opinions and in themselves of much value, should be printed for the use of the Committee, and distributed among them with a view to careful consideration. This was done; and the following are copies of the selected papers.

LORD ST. LEONARDS.

THE present scheme of reporting has the advantage of furnishing the Profession with an immediate Report of every case of any importance, with, no doubt, the unavoidable drawback of the want of time for the Reporter to obtain the briefs and papers in the cases, and to give to them that study and deliberation which the subject demands; but this is supplied by the regular Reporter, to whom ample time is allowed, and from whom an accurate and condensed statement of facts is required. Open to objection as the scheme may be, the Bar, I think, would not be willing to lose either the earlier or the later Reporter. There is such a demand for the last authority, that now and then it is not the greatest lawyer, but the one who has read up the latest cases who proves the best advocate.

By our law every decision after a regular argument is an authority, for our decisions are not like those of the French, good only for the successful party, but they operate as precedents, and will, unless erroneous, be followed. This system works admirably, although, of course, there will always be judgments open to objection.

I have not experienced any difficulty in consequence of differences

between the Reports. The weekly ones, which are ably conducted, would not be relied upon in an important case, if any doubt arose about the facts, but the briefs in such recent cases could always be readily obtained, and the facts be ascertained before the publication of the Report in full.

I should think it objectionable to call for legislative interference, or to attempt to place Reporters under the Government, or to appoint short-hand writers. You can no longer prohibit, or control by the strong hand, reporting. Every man is and must be left at liberty to go into Court and report what he pleases. The newspaper press has, and will continue to have, that privilege. No Judge could properly refuse to hear a case quoted by the Bar, but a Judge would not upon a law point allow a newspaper report to be quoted, nor would he act upon an important decision quoted from a Report hastily published, without further examination. When the regular Report is published, after the Reporter has had full time to obtain and read the briefs, and to consider the facts, the Court can safely act, for if there be any error in such a Report, it is quickly detected.

We have excellent materials to proceed upon. There are perhaps too many weekly reporters, but not too many of those I term the regular Reports. The first you cannot interfere with further than this, that the Court may, and the authority has frequently been exercised, refuse to allow a weekly reporter to be quoted, when the case is published in the regular Report. If the former are or should become too numerous, that is an evil which should be left to cure itself. Unless the sale is satisfactory, the publication will necessarily cease. One evil of numerous Reporters is, that cases, however unimportant, are reported, for every Reporter is naturally desirous to secure the insertion of his own report of a case which will not be found in any of the other Reports.

But the regular Reports are no doubt open to some objection. Many cases depending upon local Acts, which are not likely ever again to come into discussion, are reported at great length: so cases, for example, depending upon the construction of a long correspondence, can hardly be usefully reported, unless the Judge lays down or explains a rule of law. It would be useless to multiply instances. A Judge may with great propriety go at large into an examination of the facts for the satisfaction of the suitor, which it may not be necessary to report at length, although no doubt the Court frequently, in its own view of the facts, clears up half the difficulties in the case. It is impossible not to be struck with the learning and labour exhibited by our Judges in their judgments; but the length now and then is greater than the case, as a legal authority, would justify the Reporter in fully reporting.

But these things can be easily corrected, and it would be desirable that one uniform plan of printing should be adopted. No number should close with part of a case; such a mode of reporting gives the student and the practitioner additional trouble, and has the appearance of an attempt to compel the purchaser of the mutilated report to purchase the next number, and so through the series.

Some of the regular Reporters have felt themselves at liberty to leave portions of their earlier cases unreported for a considerable time, whilst they report the current cases. This is of course open to serious objections. Law Reports have always been costly, but until of late years they were of considerable value when on our shelves. Now, however, the booksellers have so managed, that after the lawyer has half-bound his Reports, he finds their value in his hands not largely exceeding the cost of the binding. There should, therefore, be no Reports of unnecessary length, or of points not of importance. With the bookseller it is of course merely a trade transaction, so that the Reporters may, in carrying out their improvements, require, in some measure, the support of the Bar and the Bench. The Profession owe a debt of gratitude to those members of the Bar who with knowledge, ability and labour, dedicate themselves to reporting; and in dispensing legal patronage, long-continued labours of a Reporter should not be overlooked.

Although I am opposed to legislative authority or an undue control over Reporters, yet I think much may be done by the Bench and the Bar to place reporting on a more satisfactory footing. The Judges cannot be required to write their judgments; that must be left to their own discretion. Where the Judge corrects the Report of his judgments, he would of course avoid altering the sense of what fell from him, and he should not detain the MS. an hour longer than necessary, for that would tend to delay the publication, and thus an impediment would be caused by the Bench itself in the accomplishment of the object in view. The Reporter should not be under or subject to the Judge, but he should be in confidential communication with the Judge. There has always in my time been an acknowledged Reporter, that is, a Reporter in whom the Judge reposed confidence and to whom he allowed a copy of his written judgments to be furnished, and in many instances the Judge corrected the MS. Report. This operated as a check upon rival Reporters in the same Court, but, if I recollect rightly, Lord Denman, when Chief Justice, broke through the rule, and whilst there were rival Reporters in the King's Bench, allowed both to have copies of the written judgments. It is not probable that there will hereafter be more than one Report of the proceedings of each Court. Although the Judge has no power to appoint a Reporter, he has necessarily considerable influence over the assump-

tion of the office by any gentleman at the Bar. There is no want of competent persons to fill the office, but no man could hope to succeed who did not possess the confidence of both the Judge and the Bar, and no bookseller would undertake the publishing the Reports unless he were satisfied that the Reporter did possess that confidence. I believe that what is now passing will go far to correct any solid objection to the present mode of reporting, and as the Bar has taken up the subject with general approbation, I would beg to suggest that besides the Report, which I presume the Committee will make embodying their views, the Bar should establish from their own body a permanent committee, a sort of family council, with power to add new members as occasion may require, whose duty it should be to keep a friendly eye over the Reports, and to suggest such improvements as may in their judgments be required, and to communicate with the Bench and the Reporters thereon, and, if it should be deemed necessary, to call a general meeting of the Bar. The simple appointment of such a body would in all probability prevent any irregularity in the reporting of the judicial decisions. If any occurred they could speedily be corrected; and it would be understood that this power, if I may so term it, would be so exercised as in no respect to wound the feelings of the highly honourable and learned class of our brethren at the Bar who dedicate their time to reporting the decisions of our Courts.

I may observe that I consider any attempt to purchase the interests in any existing Reports altogether inadmissible, nor do I think that any satisfactory arrangement is likely to be made between the large body of the Reporters in the various Courts.

Connected with this subject there are two important questions upon which the opinion of the Bar must have great influence. 1. What are we to do with the Reports already published? 2. What are we to do with the future Reports after their publication? My answer to both these questions would be, do nothing, but leave both classes to be sold to all desirous of purchasing.

As to the first class, I should consider it a waste of time and money to touch them. No good law library is without them, and although at one time they were dear, yet now they are cheap, and a sufficient stock is always in the market. To republish them as they are would cost a very large sum, no bookseller would undertake it, and it would be a waste of public money: any man who wants an old Report which is not on his own shelves, is sure to find it in the library of his Inn. If an attempt were made to curtail and consolidate these Reports, it would be an expensive and a useless labour. No bookseller would undertake any such publication, and who, having already the old Reports at large, with all the arguments, would buy the curtailed edition? Speaking for myself, I have constantly found the arguments in the

old Reports a great help to me during my long career. Who would venture to condense Coke or Plowden, for example? Besides, if we require condensation, can we hope to excel Chief Baron Comyns, or, if we look for an enlarged view, can we compete with Chief Baron Gilbert (part of Bacon's Abr.), whilst, if we call for an abridgment, have we not Viner's, in twenty-four folio volumes, besides a modern Appendix of six octavo volumes, and other works of great merit. And, not to be serious for a moment, if we prefer verse to prose we have all Coke's Reports condensed in verse, *e.g.*,

Archer,—If he for life enfeof in fee,
It bars remainders in contingency.

2. As to the suggestion that periodically the future Reports should be consolidated and corrected, we must bear in mind that we shall at a large cost already have the Reports themselves on our shelves, and, as I have already reminded you, of little pecuniary value relatively to their cost. A mere republication of the Reports under separate heads would be very expensive and would not sell, and if you desire to go further, to whom would you entrust the important task of omitting this case and throwing doubts upon that? Where is the man to be found? And by what power is such an authority to be granted? For, unless it be stamped with authority, it would simply rank amongst the legal publications of the day; and, even if made with authority, the Bar would be at perfect liberty to resort when necessary to the original Report, and perhaps damage the improved version of it. A code of law founded on the Reports every five or six years would be no benefit. In truth in the many excellent treatises which, at least in sufficient numbers, now issue from the Press, we have upon all important subjects Codes and Codes, resting altogether on the knowledge and labour of their authors. They are not law, but they undertake to consolidate and explain the law upon the particular subjects which they discuss, and for which purpose all the Reports, ancient as well as modern, are resorted to. Such treatises, with such corrections as the Legislature only can make, and which can seldom be well directed, unless a comprehensive view can be readily taken of the whole subject, tend to place the law on a just foundation. The authorities are not likely to harmonise unless they are collected and the entire subject considered. It is then that the discrepancies and departures from principle are for the first time observed. In such works discussion and, it may be, respectful disapprobation may be allowed, for their observations can only become law by force of their own weight, which may lead to their adoption by the learned Judges. Happily they are not law, but such works have more than the advantages which can be offered by an authorized Code, which is to be

binding upon us as law. It would seem to be wise, therefore, not to attempt to condense, correct and consolidate the Reports, ancient or modern.

ST. LEONARDS.

12th February, 1864.

G. W. HEMMING, Esq.

MY DEAR HOPWOOD,

I send you a note of what has occurred to me on the subject of reporting, although I confess I can suggest nothing but a choice between two plans, each in many respects open to criticism. I think it may be assumed that very strong objections exist to the present system of reporting, but I doubt much whether the Bar are at all agreed as to what the objections are.

The following are the points most dwelt upon :—

1. Singleness and authority in the Reports are insisted on on one side as essential to certainty in the law, while on the other competition and multiplicity are supposed to insure greater general accuracy, though at the expense of occasional conflict and uncertainty.

2. Multiplicity of Reports is objected to by some as entailing on the Bar needless labour and useless expense, while others extol the system as affording the best possible education to a large body of industrious juniors.

3. Self-constituted and competing Reporters are supposed to be a greater check upon negligence, whether on the Bench or in the reporting staff, than would be supplied by an official staff of Reporters, while against this it is argued that the free trade system invariably leads to the reporting of a dozen worthless cases for one of real value as a landmark of the law.

It is obvious that the Committee must come to a decision on these three main points before taking practical difficulties into consideration.

For myself I feel very strongly that there is much weight in what is said on both sides, and that the only thing to be considered is the balance of inconvenience as between free reporting (which is substantially what we have at present) and some form of official reporting, which is the only alternative. I see no middle course.

If the Committee are in favour of a free system, they must be content to perpetuate the expense and multiplicity now so much complained of, and to see shoals of cases printed half a dozen times over which never ought to get into type at all. While fifty barristers are doing the work of ten, and five or six printers are employed going over the same ground, no shifting of the conditions of competition will ever materially reduce the cost of the Reports. Until one set of

Reports substantially occupies the whole field there can be no real economy. Neither can there be any check on the monstrous growth of the Reports.

Again, if an official system, under whatever shape, is adopted, the Committee must, I think, be prepared to face many real objections. Without any arbitrary exclusion of ephemeral Reports from the privilege of citation in Court, (which I think would be most unjust,) an official set of Reports, if issued, as they should be, at moderate prices, would end by destroying all rivals; and an occupation, which is of all most useful to a young barrister, would be taken away from four-fifths of those who are now improving themselves by it. At present the effect is, that practising barristers are indirectly taxed both in purse and in time to provide their younger brethren with useful training; and it is a question to be considered whether the Bar have or have not a right to protect themselves both against the pecuniary mulct and the deluge of unnecessary law to which they now submit.

But I think it is idle to dream of keeping up ephemeral Reports on their present scale side by side with an official set published at a moderate price. The practical working of price is this. The small Bar circulation, counted by hundreds, is not much affected by it, but the large country circulation, counted by thousands, depends almost entirely upon price. If the country market were taken away from the periodicals, as it would be by cheap official publications, the ephemeral Reports could never sustain themselves, and the result, whether for good or evil, would be a single set of Reports.

Another drawback to an official system would be the extreme difficulty of arranging the patronage.

At present, when a regular Reporter requires assistance, he practically nominates his colleague, subject to the approval of the Judge. Both the old Reporter and the Judge have every inducement to select the best man, and the Reporter has ample means of judging, by trial if he pleases, or at any rate by observing who are the most efficient among the Reporters for the different periodicals.

On an official system all this would be changed. The Reporter would have no voice in selecting his colleague or successor, and wherever the patronage was lodged, and however purely it was administered, there would be no partially-trained body of Reporters as there is now to select from, and no such intimate knowledge as a Reporter himself can easily obtain of the qualifications of this or that colleague. I fear, therefore, that a system of patronage could not be depended on for the selection of the most efficient Reporters.

I do not think so much of a suggestion often made that a salaried official would be likely to neglect his duty. Nothing of the sort occurs in the House of Lords or the Privy Council. The supposed

stimulus of competition under the present system is almost imaginary, and I believe that, whether under a free or an official system, the only operative inducement to care and industry is supplied by a man's regard for his own credit,—a feeling which would be quite as strong in the case of an official as in that of a barrister who takes up reporting in the expectation of being able to throw it aside after two or three years.

I have put as fairly as I can what seem to me the chief objections to the free and the official systems respectively. It is perhaps not very material whether the arguments on the one side or the other strike me as the more weighty, but if I am to give an opinion I confess I feel little hesitation in the matter. The monstrous absurdity of smothering the law in a mass of printed Reports, all the pith of which might be condensed into perhaps a tenth of its present bulk, does, I think, outweigh every other consideration : and I am satisfied that no remedy will ever be found for this evil except in some kind of official system.

As to the details of such a plan, I do not see how an Executive Committee of the Bar would ever be able to carry it out. If all other difficulties were removed (and there are many), the vast sums which it would be necessary, not indeed to pay but to guarantee, would probably prove a serious obstacle. All that any Committee could do would be to suggest plans, to be carried out by the Lord Chancellor, backed by Government authority, so far as the pecuniary part of the project was concerned. What I should like best to see would be a set of Official Reports, printed by the Queen's Printer, and sold like other public documents for the mere cost of the paper ; but if this were objected to, it would be very easy to fix an extremely low price which would just suffice to cover all expenses after the first few years, during which it would be necessary to incur some loss.

The patronage is the greatest difficulty. I don't see the objection to the Judges retaining the sort of veto which they exercise at present, though I quite agree that the Judge ought not to control the Reporter in any way, and for myself, I may say I have never known such control to be attempted. The mere revision of proof sheets, to correct clerical errors or chance misapprehensions, is, I think, useful, and is never (so far as my experience goes) abused so as to alter in any way the reasoning of a judgment. The present relations between the Judge and the Reporter would not, I think, be improved by formally vesting the absolute patronage in the Judge of each Court.

It has been suggested that the appointments might be vested in a Committee of the Bar, but I don't think this would work, and I should scarcely expect that the Government would give salaries without retaining the absolute patronage in the hands of the Executive or the Bench.

This leaves no alternative but to vest the appointment of Reporters, like other legal appointments, in the Lord Chancellor. I doubt whether any Lord Chancellor would get such information as would enable him to make the best selection, but I see no other course.

Another objection has been sometimes taken to this course, viz., that there would be something unconstitutional in making Reporters dependent on Government, and so giving to the Executive a sort of control over the manufacture of law. But I don't see that this is more substantial than a similar objection to the appointment of judicial and other legal officers, for I assume that Reporters would be appointed during good behaviour, and that, except in very rare cases, it would never become necessary to remove them. Lastly, as a matter of detail, I think that Reporters should not be excluded from practice. I know there will be the temptation to neglect the official duty, and to leave everything to assistants; but, on the other hand, I doubt if any man out of practice would make a good Reporter, and of course, prohibition of practice implies a higher salary than would otherwise be necessary.

In conclusion, let me repeat, what I am most anxious to impress on the Committee, that a choice of evils is all that presents itself, and that it is idle to indulge in vain complaints of the present system, unless the evils of an official plan are thought more tolerable. I have heard several compromise plans spoken of, such as subsidising the present Reporters and putting them on terms as to price, promptitude, and the like; but I have not met with any suggestion of the kind which struck me as feasible. I do not believe that any middle course between the existing plan and official reporting can possibly be devised. It will be for the Committee to choose between these two. I will only add that if there is any information as to the practical working of the present plan of reporting which the Committee would like to have, I shall be most happy to give them all the details in my power.

I am, yours very sincerely,
G. W. HEMMING.

E. E. KAY, Esq.

7, Stone Buildings, Lincoln's Inn,
16th February, 1864.

GENTLEMEN,

I may perhaps be pardoned for offering some suggestions on the subject of Law Reporting. I have been for some years one of the authorized Reporters, and, when I had the honour of holding that office, I, in conjunction with my brother Reporters, made an earnest effort to

bring about a reform in the existing system, and I have then, and since, felt a great interest in the subject.

What is wanted is a well-contrived system of reporting, which should give the best possible security to the profession for the issue of a series of Reports which shall be :—

1. As inexpensive as is practicable :
2. Issued with the utmost despatch : and
3. Containing well-chosen cases, more concisely reported.

These chief requisites should be fulfilled in a manner which will supersede, by rendering useless, most, if not all, the existing series of Reports.

How to accomplish this is the difficulty to be solved.

I believe that any plan for doing so, by giving exclusive privileges to one set of Reports, is practically impossible, and, if possible, would be an evil.

The only legitimate mode of attaining the desired object, and as I believe the only practicable one, is by establishing a system, which shall command the thorough confidence and goodwill of both branches of the profession. If this can be done, a very large circulation may be obtained, and with such a circulation a good series of Reports would not only support itself, but be profitable.

"The Law Journal" had, and probably now has, an issue of about 3000 copies. Any publication which could supersede the others, would obtain an issue of at least 5000. This at £3 a year for all the Reports, would produce a yearly income of £15,000. I believe that all expenses of printing and publishing would be less than £100 * a year, and the surplus would be sufficient to remunerate the staff of Reporters and Editors.

But, however good the system, some time must elapse before so large a circulation can be obtained. It is necessary to provide for this interval. For this purpose a considerable fund is requisite.

Parliament will never grant money for such a purpose.

The Suitors' Fee Fund has a surplus income of many thousands a year, and this has always seemed to me a most proper object to which to apply it. This, however, from the mode in which the Suitors Fund is regarded by those who have the control over it, appears to be hopeless.

There remain but two alternatives. The money must be raised either, 1. By a voluntary subscription. 2. Or by an association in the nature of a chartered or joint stock company.

The last seems to me the most practical expedient.

I would invite the co-operation of the leading members of both branches of the profession to form an association, which should be incorporated by charter.

* Probably a mistake for £10,000.

By the constitution of such society it should be provided, that its object should be to publish, and preserve in the best possible manner, the judicial decisions of cases of importance in all the Superior Courts, so as that the publication should be in the form and manner most convenient to the profession.

For this purpose a committee should be formed, consisting of, say, the Attorney-General and Solicitor-General for the time being, three Equity Q.C.'s, three Common Law Q.C.'s, two juniors, one from either Bar, and at least two eminent London solicitors. This committee should have power to engage the services of gentlemen of the Bar as Reporters and Editors, and to add to or supersede them when necessary. The management of all other matters of detail should also be committed to them. The receipts from sale of the publication should be applied in paying all expenses, providing a proper remuneration for the Reporters and Editors, and paying a dividend never exceeding £5 per cent. on the subscribed capital.

All surplus receipts to be applied in reducing progressively the price of the publication.

But I regard it as essential that the remuneration of the Reporters should be made directly dependent on the success of the Reports, to give that stimulus which excites every one to his best efforts. And therefore a minimum yearly payment should be fixed, and this should increase in a predetermined ratio, as the circulation of the series augmented.

The profession have become accustomed to receive, by such publications as "The Jurist" and "The Weekly Reporter," a weekly issue of Reports to the latest date, and this has been found a great convenience. I believe that to insure a large circulation it will be necessary to have a weekly issue. Some provision to this effect should be made.

The Lord Chancellor should have a veto upon any alteration of the rules.

The Committee should be bound to issue a printed Report of its proceedings at least once a year.

Meetings of the association should be held yearly.

There should be power to call extraordinary meetings.

The place of meeting should always be one of the legal centres, say Lincoln's Inn Hall.

The vitality of the Committee should be ensured by rotation, retirement, and fresh elections, as provided by the Companies Clauses Act, or in some similar mode. In every possible manner the staff of Reporters, and the Editors, should be made subject to their direct supervision, and the Committee themselves to the control of the association, so as to ensure by constant mutual action the most efficient discharge of their respective duties.

I believe that the undertaking would be more certain of success if the Reports were commenced at a yearly price not exceeding £3. It would be easier to secure a circulation of 5000 copies at this price than to obtain a circulation of 2000 at £5 a year.

An association of this kind originated by your Committee, supported by the leading members of all branches of the profession, having a carefully-framed code of rules, would find, I believe, a large and cordial support.

Reports so issued would supersede the existing series (which are mere booksellers' speculations), or most of them, in a manner at which no one, not even the booksellers, could fairly cavil.

Most of the present authorized Reporters would, I believe, willingly accept reporterships so instituted. There is no lack of thoroughly competent persons who would gladly perform this duty.

I am, Gentlemen, very respectfully yours,

EDWARD E. KAY.

The Committee of Law Reporting.

JOHN PEARSON, Esq.

16, Old Buildings, Lincoln's Inn,
16th February, 1864.

DEAR SIR,

In compliance with the request contained in your letter of the 20th of January, I venture to offer a few remarks on the present system of Law Reporting, and the mode in which it has occurred to me that some improvement might be made in it. I would premise that my remarks are intended to be confined to the Equity Reports.

The crying evil of which the members of the Chancery Bar have to complain is the badness of what are termed the "Authorized" Reports.

- a. They are issued very irregularly, and are always more or less in arrear.
- b. They are very costly.
- c. They contain a large number of cases which are useless.

It is, I think, very undesirable,—perhaps I might say impossible,—to restrict the right to print Reports of cases heard and determined in Courts which are open to all the world. The remedy, therefore, for the existing evil is not to be found in establishing an "authorized" system of reporting and prohibiting any other.

The duty of Government in this matter is, I conceive, to see that Reports of judicial decisions are supplied to the legal profession, sufficiently full and accurate to enable the practitioner to know what

the law, as expounded by the Judges, is. The cost of these Reports ought to be so moderate as not to be unduly burdensome to those who have to buy them.

If private skill and enterprise furnish such Reports the Government need not interfere. Its duty is, I apprehend, to see that such Reports are supplied, not necessarily to supply them.

Private enterprise has failed to secure to the profession such Reports of judicial decisions as ought to be furnished; the time, therefore, seems to have come when the Government should step in and attempt to supply the deficiency. How is this to be done?

At present the Registrars of the Court are supposed to take notes of everything material that passes in the argument of a cause, and in the event of any dispute the Registrar's note, if one exists, is generally, if not always, considered conclusive.

The Registrars are always in Court, they hear the entire argument, and judgment, and finally frame the decree. I would suggest that the duty of issuing Reports should, to the extent to be presently mentioned, be thrown upon the registrars.

Short-hand writers should, I think, be attached to each Court, whose duty it should be to take every judgment pronounced by the Court, and every judgment should be written out, signed by the Judge pronouncing it, and preserved in the same way in which decrees are now recorded.

These short-hand writers might be allowed for their own profit to take notes or make copies of any notes taken by them for suitors: and with this privilege I apprehend their services might be obtained without any great expense.

The pleadings, the Registrar's notes, the judgment and the decree would furnish all the materials requisite for a Report. The Registrar must, of course, take fuller notes of the argument than he does now, and whilst I know of no reason which should prevent his doing this, there would result from its being done this great advantage, viz., that the records of the Court would show at all times what points were raised, argued and decided in each case. From these materials a certain number of cases might be selected to be reported. My present impression is, that three volumes might be usefully published in the year; one in Hilary Term, containing cases decided between November and Christmas; one in Easter Term, containing cases decided between Christmas and Easter; and one in the Long Vacation, containing cases decided after Easter.

The cases reported should be selected indifferently from all the Courts. No fixed number should be reported, but such only as are likely to be useful. In many cases a short statement of the pleadings and a full statement of the decree would answer every purpose.

The type and price of the volume should be as good and as low as will be consistent with no loss being incurred in the publication.

I have only to add that if this plan were adopted some addition must necessarily be made to the staff of Registrars. What this addition should be, or in what way the duties of reporting, which I propose to entrust to them, should be discharged, as regards the distribution of them amongst the Registrars, can be determined only after communication with them, and I therefore purposely forbear to enter upon these details.

The benefits which the adoption of some such plan as I have suggested might, I think, secure to the profession, are the following:—

1. The records of the Court would be made more complete than they are at present.
2. The Reports would be issued by officers of the Court, who would have the amplest means of making the Reports accurate.
3. The *regular* issue of the Reports would be under the control of the Court, whilst the Reporters would be independent, holding office *dum bene se gesserint*.
4. The Reports would be cheaper than the present authorized Reports.
5. The Registrar would select only such cases as deserved reporting, being not bound to the publication of any fixed number.
6. Independent reporting, with which this plan would not interfere would supply any deficiency in the Registrar's Reports.

These are the suggestions which I have to offer in compliance with the request contained in your circular letter, and I venture to lay them before the Committee, in the hope that even if they should be judged worthless, they may have the good fortune to elicit some better scheme.

I am, dear Sir, yours faithfully,

JOHN PEARSON.

J. T. Hopwood, Esq.

MESSRS. F. S. REILLY, WOLSTENHOLME, R. O. TURNER, C. M. ROUPELL
AND H. F. BRISTOWE.

In answer to the circular of the Committee we submit the following Scheme and Remarks:—

SCHEME.

1. That an endeavour be made to induce the regular Reporters, and the publishers of the regular Reports, to act together according to the arrangement following (in which, if possible, the Reports

- of the House of Lords and of the Privy Council should be comprised).
2. That, in lieu of the present mode of publication, the regular Reports be brought out together, but so as to be separable into divisions for Law, Equity, and so on, and also into a series for each Court, if the purchaser so wishes.
 3. That a volume or part be published monthly or at other fixed periods.
 4. That there be a Committee of Management elected by the Reporters from among themselves.
 5. That a proper number of Editors to superintend the several divisions (Law, Equity, and so on) be chosen by the Reporters from among themselves, or be appointed by the Committee.
 6. That the first Reporters under this arrangement be the present regular Reporters.
 7. That, as vacancies occur, the number of Reporters be reduced to one for each Court.
 8. That when the number has been so reduced in any Court, the Reporter have an assistant (or assistants).
 9. That the assistant Reporter for each Court be appointed by the Reporter for the Court, subject to a veto by the Committee.
 10. That the first assistant Reporters be selected from among those now employed in reporting for other than the regular Reports.
 11. That assistant Reporters be alone eligible to reporterships.
 12. That assistant Reporters be entitled to fill vacancies in the office of Reporter, not however each in his own Court, but the assistant reporters for all the Courts of Equity, for example, to form one class, and to be promoted to reporterships according to standing in the class.
 13. That the Reporter and assistant Reporter for each Court distribute the work as they may arrange between themselves, but that one of them be required to be always present in the Court during its sitting.
 14. That (in addition to the complete Reports) there be brought out, weekly, preliminary Notes of Cases, under the superintendence of an Editor or Editors chosen by the Reporters and assistant Reporters from among themselves, or appointed by the Committee.
 15. That there be brought out yearly under the direction of the Committee a digest of or index to all cases reported during the year in the regular Reports, Notes of Cases, or elsewhere.
 16. That subscriptions be received for the whole body of Reports, or for any division or divisions, or for the series of any one or more of the Courts, with or without the Notes of Cases.

17. That the proceeds of the sale of the Reports and of the Notes of Cases be carried to a common fund.
18. That out of the common fund there be paid all expenses of editing and publication (including the expenses of the Committee.)
19. That, next, out of the common fund there be paid to each Reporter a reasonable fixed salary of equal amount in all cases.
20. That, next, out of the common fund there be paid to each assistant Reporter a reasonable fixed salary of equal amount in all cases.
21. That, lastly, the residue of the common fund (subject to any reservation for meeting contingencies or other purposes) be year by year apportioned by the Committee among the Reporters and assistant Reporters, according to the amount of subscriptions received for the year for the several divisions of the Reports, or for the series for the several Courts, so that the total remuneration of each Reporter and assistant Reporter may as far as possible be proportionate to the demand for his Reports.
22. That, ultimately, if this arrangement succeeds so as to produce for each Reporter an income of £ a year or upwards, Reporters be required to relinquish professional practice.
23. That if the regular Reporters concur in this arrangement, but the publishers of the regular Reports do not, then the Reports be published by the Committee.
24. That in either case the receipt of subscriptions be under the control of the Committee.
25. That in either case the copyright in and the right to use the name of and to continue the series of Reports established under this arrangement be vested in trustees, in trust to support this arrangement.
26. That every person accepting a (principal) reportership under this arrangement be required to undertake that he will not at any time afterwards set up or be concerned in any other series of Reports, and generally that he will conform to the regulations from time to time made by the Committee.
27. That the Committee publish annually a statement of their accounts, with statistical information shewing cases published, arrears for the year, and other particulars illustrative of the working of this arrangement.
28. That there be a small Committee of members of the Bar and of attorneys and solicitors (nominated respectively by the Benchers of the four Inns of Court and the Incorporated Law Society) to watch over the interests of the profession in relation to the

Reports, particularly with respect to the quickness and regularity of publication, and the price, and generally to bring the opinion of the profession to bear, so as to better effectuate this arrangement and check any evil consequences that the absence of actual competition with the regular Reports might tend to produce.

REMARKS.

The acknowledged evils of the present state of things seems traceable almost entirely to two causes; first, that the regular Reporters do not co-operate; secondly, that they are not under any definite control. The Scheme we have submitted is calculated to supply what is wanting in both respects.

If the benefits of some such organization and system of check were superadded to the advantages of position which the regular Reports already enjoy, there appears no reason to doubt that the increase of sale on the one hand, and the diminution of expenditure on the other, would be such that ample funds would be supplied for the adequate remuneration of well-qualified Reporters devoting their whole time to the work, and for meeting all other expenses, and that before long all competing Reports would be given up as profitless.

There would seem therefore to be good grounds for expecting that not only the regular Reporters, but also the publishers of the present regular Reports, would concur in such an arrangement. If the publishers did not concur in a body, it would seem desirable that the publication should be retained in the hands of the Reporters themselves. Great care should, we submit, be taken, in any arrangements, to prevent the growth of new extra-professional interests by which the introduction of further improvements might be thwarted.

In addressing such a Committee it would be superfluous for us to dwell at any length on considerations tending, in our opinion, to shew the impracticability or inexpediency of more violent measures for getting rid of competition among Reports. We will only, in conclusion, refer briefly to four of the most important of the views that have at times been put forward.

1. The doctrine that law reporting is a function of the State, even if conceded to be defensible *à priori*, is, we conceive plainly inapplicable to practice under existing circumstances.

2. We submit that it would be highly inexpedient (if it were practicable) to cast upon the Judges the task of performing directly or indirectly, those duties which have hitherto been, and ought (as we think) to continue to be, discharged by functionaries independent of the Bench; and that it is undesirable even to acknowledge in any formal way any authority whatever in a Judge to control the recording

and publishing, for professional information, of the opinions delivered by him in open Court.

3. Any form of reporting by which the facts and pleadings were recorded merely as they were dealt with in the judgment of the Court would, we think, be insufficient for professional guidance.

4. The suppression of the unauthorized Reports (as they are termed) by means of a refusal on the part of the Courts to allow them to be cited, would not, we think, meet with the general support of the profession, even if that course would be consented to by the Courts, or could lawfully (which we venture to doubt) be adopted by them.

VERNON LUSHINGTON, Esq., AND GODFREY LUSHINGTON, Esq.

What the profession requires is a series of Reports which shall be at once accurate, prompt, and cheap. The object of this paper is to shew how far this want is not supplied by the present system, or rather practice of reporting, and to suggest what seems to be a more satisfactory arrangement.

Adopting the usual division of Reports into authorized and unauthorized:—

The authorized Reports are accurate, but they are always expensive and generally in arrear. The arrear is caused either by the staff of Reporters being inadequate, or by the Reporters being engaged in private practice. The expensiveness we can only attribute to certain traditional notions of dignity and importance attached to a handsome octavo. In result these Reports have only a limited sale and limited use.

The unauthorized Reports, of which there are at least five concurrent series, are fairly cheap and fairly prompt, but they are more or less open to the charge of inaccuracy and incompleteness (*e.g.* want of due indexes, insufficiency of statement, repetition, &c.). These defects arise from various causes; from undue haste; from the difficulty of obtaining the requisite materials; from the Reporters being insufficiently paid, or being paid according to the length of the Report, occasionally from the Reporters having been absent from Court and being obliged to frame their Reports at second-hand. These defects, we think, have fallen under the experience of every one in the profession; they are excused because the Reports are prompt and cheap. The co-existence of five different series is a sufficient proof that the profession is not content with any one of them.

The multiplicity of Reports, authorized and unauthorized, lead directly to two evils.

1. There are occasionally, almost frequently, conflicting Reports of the same decision.

2. All the various Reports are cited in the Courts and are more or less referred to in the treatises, but no one person possesses them all. The result to the practitioner is constant inconvenience and increase of labour, and nothing but long experience can protect him from having a case sprung upon him at the last moment, for which he is unprepared, because it is recorded only in Reports not in his possession.

We think it clear that the unauthorized Reports are properly only temporary makeshifts, and that the cause and justification for them is to be found in the short-coming of the authorized Reports. For once suppose a single series sufficiently combining the qualities of accuracy, promptness, and cheapness, would not all other Reports be simply a nuisance?

The question then is, whether such a single series can be obtained, and if so, how? We think it can be obtained but by due official arrangement, and not otherwise, and we also think that for an object of so much importance an expenditure of public money would be justifiable.

We think, therefore, that the judgments of each of the Superior Courts should be officially reported.

We would propose,

1. That to each Court should be attached two, or, if necessary, three reporting barristers, to be appointed by the Judge, and to hold office during good behaviour. Salary, senior Reporter, £300 per annum; junior Reporter, £200, to be paid from Her Majesty's Treasury. Private practice to be allowed. This arrangement would avoid the danger, on the one hand, of the Reporters neglecting their reporting for private business, and on the other, of competent barristers declining the office of reporting because incompatible with private practice.

2. The reporting barrister to have an assigned place in Court, and to have copies of all printed documents (if any) in every cause. Each Court to have a short-hand writer at a fixed salary, under engagement to furnish copy of his notes to the Reporters at a reduced price.

3. The Reports to be printed and published by the Queen's printer. Every case worthy of a Report to be reported, and no others. Each case to be published separately on a separate sheet or separate sheets. Each case to be published with all reasonable despatch, and to bear on its face the date of publication. Strict chronological order not essential. Monthly or quarterly parts to be issued as convenient. Paper, type, &c., to be chosen with a view to cheapness and convenience. The volumes for binding not to exceed 500 pages each, so as to be comfortably held in the hand.

As to the manner of reporting, we have to say that this is a matter entirely for the Reporter's own skill and judgment. His guiding purpose is to frame a record of the law declared by the Judge; clearly nothing material to this purpose should be omitted; clearly also, everything immaterial should be rigorously excluded; what is material, what immaterial, the Reporter himself must in each case judge. We must, however, observe that a good Reporter will by every method strive to keep down the bulk of the Reports.

We are satisfied that it is not to be expected that Judges will alter their mode of composing and delivering judgments. They will deliver them, as heretofore, extempore, or on consideration, *vis à voce* or in writing, as they find convenient, and will in each case state as much or as little of the facts as they think fit. Hence it follows (as every Reporter knows) that judgments will often omit statements of fact which are necessary to the full understanding of the case. To supply all such omissions is the duty of the Reporter, and the notion that the publication of the bare judgment, as Mr. Westlake has suggested, would be sufficient, is in our opinion illusory. The recent judgment of the Privy Council in "Essays and Reviews" strikingly illustrates this view, so does the whole series of Sir Christopher Robinson's Reports.

We think that the accepted form of a Report is the right one; that a Report should be framed so as to be read as a whole, commencing with a careful statement of the material facts, then setting out any statutory enactments, &c., cited in the argument or judgment; then stating the arguments of counsel on the legal points with reasonable fulness, reasonable brevity, taking especial care to shew for what purpose each authority is cited:—then the judgment of the Court.

From the judgment (as from the argument) we think all mere questions of fact should be as far as possible excluded; the results, if necessary, to be stated "*nettement*," with the utmost brevity. The passages relating to the law should be faithfully reproduced; literally where convenient; but even here we think some measure of reverent discretion should be allowed the Reporter. (As a fact we are sure that such a discretion is generally exercised.) In particular the interlocutory observations of the Judge during the argument ought not to be recorded, unless plainly important.

The proof sheets of the Report we propose should be submitted to the Judge. The fears which some persons entertain of Judges improperly tampering with the law which they have themselves promulgated are, we think, ill-founded.

In the case of long judgments *marginal* notes may be found convenient, if not too expensive.

The *head-note* prefixed to each case again is a matter for the

Reporter's discretion. Precision, brevity, clearness—these ought plainly to be his aims.

As to *Nisi Prius* cases, we think that they should be sparingly reported. It remains only to consider what, if anything, should be done as to the Reports now current. So far as we have considered the matter we do not think it necessary that compensation should be made to any of the parties interested, whether reporters, publishers or printers; but we would not wish any question of compensation to stand in the way of the reform required. If the above scheme of official reporting were adopted, the present authorized series would at once cease, or at least cease to be authorized; and if the system were carried out with the honest support of the Judges and the profession at large, we think all competitors would languish and come to a natural end. After experience of the satisfactory working of the Official Reports, it might be expedient to forbid the citing of any other Reports. This would hasten the consummation.

In coming to the above conclusions we have not forgotten the advantage many young barristers derive from reporting in one or other of the unauthorized series; but we think that this advantage, which we admit is not altogether a private one, ought to yield to the public good to be expected from a more correct, expeditious and available record of the judicial law. We would also add, that the establishment of an official staff of Reporters would probably lead to an authorized re-issue in a condensed form of the voluminous Reports now extant;—a work which is every year becoming more urgent.

VERNON LUSHINGTON, } Barristers,
GODFREY LUSHINGTON, } Inner Temple.

16 February, 1864.

DANIEL JONES, Esq.

In considering the subject of the amendment of the present system of Law Reporting, the question which necessarily takes precedence of all others is the following:—Is it desirable that a particular set of Reports should be exclusively authorized for citation in the Courts? Until this preliminary question is decided, it is obviously premature to discuss the details of any particular scheme.

The great objection to what may be called the exclusive system lies in the power it vests in the Reporters of modifying the law according to their ideas of what it ought to be. In this country a Judge is bound to shape his decisions so as to be in harmony with the existing rules and practice of his Court, and he avails himself of the decisions and opinions of other Judges as evidence to guide him in ascertaining

what those rules and practice are. To admit, therefore, one set of Reports for exclusive citation, is to vest in the Reporters the power of deciding what cases shall be received in evidence, and what rejected. Judges no doubt may err, but they are at least as likely to be right as Reporters, and it may therefore be questioned whether the public interest would be advanced by constituting the latter a species of Court of Review over the former. And even if the Reporters were entirely indifferent to the question of the soundness of the decisions reported, and were guided in the selection of the cases for reporting solely by the consideration of their importance, yet it may be thought in the highest degree doubtful whether the power of deciding finally and irrevocably what is of importance and what is not, could be safely and profitably entrusted to them. Of course it would be possible to have an exclusive system, according to which the Reporters should not have this extraordinary power, viz., either by vesting the power of selection in the Judges, or by making it the duty of the Reporter to give a full report of all cases, great and small indiscriminately. Probably, neither of these plans would find many supporters; the former is open to serious objections, which it is needless to set out here, while the waste and expense which would necessarily attend the latter are sufficient at once to condemn it.

Further, even if the Committee should be of opinion that the advantages of an exclusive system are sufficient to more than compensate the evils, it by no means follows that such a system ought to be recommended for adoption. Regard must be had not merely to what is desirable in the abstract, but also to what is practically possible. It is probable that the great majority of the Bar would be slow to support an entirely new system, which must be to a great extent experimental, that they would prefer to endure existing evils rather than venture on a radical change, unless the resulting advantage were clear and demonstrable. Then vested interests would have to be dealt with, a fund provided to meet the outlay (which must necessarily be large), and Judges induced or compelled to accept the new system. Looking simply to the magnitude of the difficulties to be encountered, and without prejudging the question of an exclusive system as an ultimate scheme, it is submitted that it is not expedient at the present time that such a system should be recommended to the profession for adoption.

On the other hand, much may be done to amend the existing system.

It is to the interest both of the public and of the profession that there should be a single series of Reports to which the practitioner could refer with confidence that he would find there every decided point of importance, that the Reports should be accurate, issued with despatch, and at a moderate price. Any scheme that

should effectually secure these advantages would probably meet with that approval and support without which no important alteration could be hoped for.

The following outline of a plan for consolidating and amending the so-called "Authorized Reports" is submitted. Let the reporting staff consist of Editors and Reporters, probably four of the former and about thirty of the latter would be necessary. It is a matter for consideration by whom the appointments should be made—perhaps a Committee of the Bar, as suggested by Mr. Daniel, would perform the duty most advantageously. An arrangement could probably be effected by which the greater part of the present contributors to the "Authorized Reports" would accept appointments under the new system. The *Reporters* should have liberty to practise, provided that no private engagements were allowed to interfere with the due discharge of their official duties. This is an essential feature, as on these terms there would be no lack of able men willing to work at very moderate salaries, while, if the Reporters were required to devote themselves exclusively to the duties, a very large sum would have to be paid for the services of competent persons. It is an equally important feature that the *Editors* should be required to devote themselves exclusively to the duties. Otherwise there will be no sufficient guarantee for excellence and despatch in the Reports. The Editors should be barristers of first-rate attainments, and, of course, must be highly remunerated. The fixed remuneration of the Editors and Reporters would form part of the cost of producing the Reports, and would be met by the sale; it might be desirable that they should also take a share of the net profits, which might reasonably be expected to be considerable. The Editors would exercise a general superintendence over all matters relating to the production and publication of the Reports. One duty of the Editors would be to arrange the sittings of the Reporters in the various Courts, so that one Reporter should be present during the entire sittings of each Court. It would be the duty of each Reporter to attend in Court during the time allotted to him, but he would have the privilege of substituting the services of another Reporter for his own when necessary. It would be the duty of a Reporter to take full notes of every point decided by the Court (except such as in his judgment were too trivial to be worth reporting, even in a short and inexpensive form), together with the reasons given by the Judge, and such other matters as are required for a complete report, and he should, if necessary, have the assistance of a shorthand writer for the purpose. The Reporter should forthwith prepare a concise report of each case, and transmit the same to the Editors for immediate publication, as hereinafter mentioned. The Reports should be of two kinds, the preliminary and the permanent,

though, to prevent misconception, it should be stated that the preliminary issue would contain many points of minor importance which would not be worth the expense of reporting in a complete form in the permanent series, and of which, when needed for citation, the original concise report would be sufficient. The preliminary Reports should be issued weekly, and should contain clear and concise notices (something in the style of the "New Reports") of all cases furnished to the Editors, which, in their judgment, could be likely to be of use as precedents, and the error should be on the side of reporting too much rather than too little. The Editors should forthwith select all such cases published in the preliminary issue as in their judgment were of sufficient importance to be worthy of a place in the permanent series, and should direct the various Reporters to rewrite such cases for the purpose of publication in the complete form. The permanent Reports should be issued monthly, and it would be the duty of the Editors to use every effort to ensure that these Reports should be in all respects as perfect as it was possible to make them. It would further be the duty of the Editors to prepare annually an elaborate and careful digest, comprising all points contained as well in the preliminary as in the permanent Reports. Probably no difficulty would be found in inducing the Judges to give that assistance in the revision of their judgments which they now give to the "Authorized Reports," and, perhaps, arrangements could be made whereby the regular Reporters would have special facilities in obtaining papers. To this extent the regular Reports would have an advantage over their competitors, but in all other respects they must make their way by merit only. Much no doubt would depend on the manner in which the Editors and Reporters discharged the duties and exercised the discretions entrusted to them. They would, however, have sufficient motive for exertion. They would have the direct inducement of profit, and they would also be exposed to the criticism of competitors eager to point out mistakes and omissions. A further stimulus in the shape of an Annual Report by a Committee of the Bar might perhaps be applied with advantage. Under these circumstances it is not too much to expect that the regular Reports, modified as proposed, would be far superior to any others in all essential respects, that they would (and especially the preliminary issue), if sold at a moderate price, command a large sale, and the system thus be self-supporting. Possessed of the double set of regular Reports the practitioner would never be under the necessity of searching elsewhere. For these Reports must contain, in one form or other, a report of every case in any degree worth reporting, and in the great majority of instances a better report than could be found elsewhere. Finally, there would be no interference with existing interests, except in the case of the proprietors of the present authorized

Reports, who could be compensated by a share of the new work. Publishers would be at perfect liberty to produce a better and cheaper article if they were able to do so, and their efforts in this direction would act favourably on the regular Reporters. It is, however, probable that, assuming the new system to be well conducted, in the end one or two sets of irregular Reports at the most would be able to maintain themselves.

JOSHUA WILLIAMS, Esq.

The present system has arisen from the default of proper records of their own proceedings being kept by the Courts. The privilege which the Bar has of reporting cases comes to this, that any barrister may inform the Court of that which the Court might much better know from its own records.

The evils of the present system very much arise from the fact that some Reporters, called authorized, are furnished by the Judges with notes, to which the others have not access. These Reports are bought for their presumed accuracy, whilst others are bought for their expedition, and others again for the sake of obtaining what the rest may miss.

No remedy appears to me sufficient which does not strike at the root of the evil. It would be desirable that all judgments should be written; but this appears impracticable. I should therefore propose as follows:—

That it be the duty of the Registrar to record the names of all solicitors concerned, and of all counsel who appear in any cause or matter argued by counsel, the points for which they contended, and the authorities cited by them. Counsel and solicitors should be bound to assist the Registrars in these particulars when required.

That each Registrar be assisted by one or more shorthand writers, whose duty it should be to take down the remarks of the Judge, and especially the judgment, and any remarks by others which may be necessary to render them intelligible.

That the shorthand writers' notes be written out as soon as possible, and furnished to the Registrar.

That it be the duty of the Registrar from these notes and his own recollection, with the assistance of the Judge, should he think fit to give it, to prepare a record of the case, containing the particulars above mentioned and the formal decree.

That this record be printed as soon as possible by the Queen's printers on paper of a given shape, each cause being on separate paper, and the transactions of each day being printed the next, if possible, or within two or three days at least.

That the records so printed be published and sold at a low price, with liberty to any person to reprint the same.

That the record so made may be amended by the Court on sufficient evidence of its inaccuracy.

That the record so made be evidence in the same manner as the records of the Courts now are.

Here I would stop.

Reports would still be necessary; but the privilege of the Bar as Reporters would not be required for the benefit of the Court. Any member of the Bar should, however, have free access to the pleadings and evidence of record in the Court, for the purpose of reporting or verifying Reports for the benefit of the profession and the public. A full history of every suit would be in the possession of the Court. Abstracts of the pleadings and evidence, more or less concise and skilful, would be made by Reporters for the convenience of the profession. All Reporters would be on a level, and all would be furnished with the raw material, so that "authorized Reports" would necessarily cease.

There would be no chance of any case being missed by the Reporter.

Reports long relied on as authentic would not, as now, be liable to be set aside by reference to the Registrar's book; for the printed records of the points argued and the judgment given in each case would be at once circulated in the profession.

No person would need to take in more than one set of Reports. And the best would consequently in time drive out the others.

Competition would thus produce both excellence and cheapness.

The making a clear and concise statement of facts, and above all a good marginal note, may be done so much better by one than another, that I think it is not of a nature to be trusted to any official person. What is official should be dry and accurate merely. The bare facts should be presented officially. Abstracts and digests, now called Reports, appear to me essentially the subjects of open competition, rather than of official protection.

The printed records proposed would often be of great service to the parties to the cause, and to the Court on appeal, and to purchasers and others in the numerous cases in which Chancery proceedings form part of the title to lands.

The Reporters now engaged or some of them might be appointed as additional or assistant Registrars. But under this Scheme no compensation could fairly be required by any Reporter.

The remarks above made are principally applicable to the Courts of Chancery, which, however, appear to be more in need of reform in reporting than the Courts of Law.

I think that a Joint Stock Company, Limited, formed by members

of the Bar for the purpose of reporting, would probably succeed. But I should not think it within our province to recommend the formation of such a Company, nor should I be inclined to act as a promoter of such a Company.

I think that the elimination from the law of irrelevant and contradictory matter would be best effected by an officer of high legal attainment and of high rank, whose duty it should be to watch the current of decisions, to receive from the Judges communications as to points on which serious difference prevails among them, and to submit bills to Parliament from time to time, with a view to the amendment and simplification of the law. It is well known that all the great legal officers of State are far too much occupied to give to the subject of law improvement the minute and patient attention which it requires. But I doubt whether it would be within our province to suggest the appointment of such an officer.

J. W. DE L. GIFFARD, Esq.

GENTLEMEN,

I had not intended at first to obtrude my views upon the attention of the Committee, feeling that my position as a Reporter would expose me—and in some degree justly perhaps—to the suspicion that I was incapacitated from forming an impartial opinion upon the question before the Committee. Upon reflection, however, I have arrived at the conclusion that the Committee may not be indisposed to hear all parties, and I therefore venture respectfully to offer a few suggestions for their consideration.

The first step in the curative process is a knowledge of the disease and its origin. It has been determined by authority that "the present system of Law Reporting is defective, and requires amendment." The defects of that system are, I imagine, equally well acknowledged. They are these:—

- 1st. The number of the concurrent series.
- 2nd. The annual expense of purchasing them.
- 3rd. The uncertainty and delay in their publication.
- 4th. The imperfect manner in which they are prepared.

The *fons et origo malorum* is attributable, in my opinion, to the Reporters of a former time, who, when reporting was highly remunerative, retained their office long after their professional practice made it impossible for them to discharge the duties they undertook. This proceeding led to delay in publishing the Reports, and occasionally, as in the case of the last part of "5th Russell," to the suppression of the Reports altogether; and this misfeasance, or nonfeasance, on the

part of the Reporters led to the recognition by the Bench and by the Bar of those other series of Reports which recently have increased far beyond the public requirements.

At present the evils of which the profession justly complain originate almost entirely, as I venture to think, in the existing competition that prevails. Competition, where the demand for any article is practically unlimited, operates beneficially, because, in such cases, there is a prize to be won, and the result of the competition to the public is, the obtaining the best article at the lowest remunerative price. But, on the other hand, where the demand is limited, competition not unfrequently leads to the ruin of all parties concerned, and to the production of an inferior article at an exorbitant price. This, I venture to think, is very much what has happened in the case of the Reports. There are numerous competitors for a circulation which is little more than enough to afford adequate remuneration for one or two. I think this may be proved with reasonable certainty.

Assuming what I take to be indisputably true, that the circulation of the Reports is, and must ever remain, almost exclusively confined to the members of the legal profession, the following statistics, which I believe to be substantially correct, will shew the probable circulation :—

| | |
|---|--------------|
| Number of country solicitors as given in the Law List for 1863 | 3,168 |
| London solicitors, ditto ditto | 3,019 |
| Number of counsel as given in the Post Office Directory as holding chambers, including conveyancers and special pleaders not at the Bar | 1,959 |
| The number of the solicitors for the present purpose would have to be reduced in order that the number of firms of solicitors might be ascertained. It would be difficult to do this exactly, but inasmuch as many firms consist of three and even more members, and as many solicitors take in no Reports at all, I think it would not be very far from the fact if I were to assume that one half the town and country solicitors given in the List are subscribers to one or other of the series of Reports. | |
| The required number would therefore be, disregarding a fraction | 3,093 |
| The list of counsel given in the Directory for 1863, includes County Court Judges, Magistrates and others not engaged in the practice of the profession. Supposing the number of these gentlemen who take Reports to be 1500, the figures will stand thus | |
| | 1,500 |
| Total | <u>4,593</u> |

But as there are some counsel domiciled in the country who take the Reports, and there is also a circulation in America and in the British colonies, although of no great amount, I think the number of subscribers to one or more of the series of Reports may be assumed to be about 5000. For these 5000 customers there are the following competitors :—

The Authorized Reports.
 "The Law Journal."
 "The Jurist."
 "The Weekly Reporter."
 "The New Reports."

If the circulation were equally distributed among these five candidates, it seems clear that, except at a very high price, none of them could be sold at a profit. On the other hand, if any one engrossed the whole of the custom, such publication could afford a higher scale of remuneration to the Reporters, and could be offered to the public at a comparatively moderate price. I ought to observe here, that when I speak of authorized Reports, I refer to Reports in Equity alone, for of the authorized Reports at Law I know little or nothing; I do not include the House of Lords.

The circulation of the different series is supposed to be on an average nearly as follow :—

| | | |
|-----|---|--------------|
| | The authorized Reports, each series about | . 450 |
| (1) | "The Law Journal" | 4,000 |
| | "The Law Times" | 3,000 |
| | "The Weekly Reporter" | 1,500 |
| | "The New Reports" (say) | 100 |
| | Total circulation | <u>9,050</u> |

If these figures be reasonably accurate, it would appear that most of the 5000 subscribers take a second series, and this probable inference accords, I believe, with the fact. Most of the subscribers to the authorized "Reports" take "The Weekly Reporter," or "Jurist," or "Law Journal," and sometimes two or more of these publications.

I have stated above, that if one or two of these competing series of "Reports" enjoyed the whole of this circulation, the profession might have a better or cheaper, and in the case of the authorized "Reports," both better and cheaper Reports than can be had at present.

Let me begin with the authorized "Reports."

The selling price of the authorized "Reports" is generally at the rate of about 1s. per sheet. A volume of forty-four sheets would

(1) I put the Law Journal at 4000, because that is generally supposed to be the amount, but I believe 3750 is nearer the amount.

therefore cost the profession 44s., but it would yield to the proprietor only that amount less 30 per cent. trade discount and commission.

On a circulation of 400, the figures would stand thus:—

| | | | |
|--|------|---|---|
| 400 × 44s. less 30 per cent. = 400 × £1 10s. 8d. | £613 | 6 | 8 |
| Put the expense of printing and paper at £6 per sheet. | 264 | 0 | 0 |
| Balance . . . | £349 | 6 | 8 |

Let me now take the circulation at 2000, and the selling price at 6d. per sheet, and the figures will stand thus:—

| | | | |
|--|--------|---|---|
| 2000 copies at £1 2s. = £2200 less 30 per cent. | £1,540 | 0 | 0 |
| The paper for 2000 copies would be 200 reams, and at | | | |
| £1 5s. per ream would amount to . . . | 250 | 0 | 0 |
| Printing at, say £4 per sheet . . . | 176 | 0 | 0 |

The result would be as follows:—

| | | | |
|--------------------------------------|--------|---|---|
| Gross receipts (less trade discount) | £1,540 | 0 | 0 |
| Paper | 250 | 0 | 0 |
| Printing | 176 | 0 | 0 |
| | £426 | 0 | 0 |
| £1,540 | 0 | 0 | |
| Less 426 | 0 | 0 | |
| £1,114 | 0 | 0 | |

Therefore the ordinary octavo volume of the authorized series in one of the Vice-Chancellor's Courts would, if sold at half the present price, produce on a circulation of 2000, £1114 clear of all expenses, and after allowing for the enormous trade discount and commission. If two-thirds of this amount were saved—which upon a well-organised system could be easily done,—there would be a fund of above £1500 a year available for the payment of the Reporters and the gradual reduction of price.

I will now consider "The Law Journal" as being the most successful of the unauthorized series of Reports:

Take the circulation at 3750.

To subscribers it costs, I believe, about £3 3s. or

| | | | |
|---|---------|---|---|
| £3 5s., but when sold in the trade the annual cost is £3 15s. Taking £3 10s. as the average price, the figures would stand thus . . . | £13,125 | 0 | 0 |
|---|---------|---|---|

| | | | |
|---|-------|---|---|
| Deduct 20 per cent., which is the rate allowed on "The Law Journal" . . . | 2,625 | 0 | 0 |
|---|-------|---|---|

| | | | |
|---------------|---------|---|---|
| Balance . . . | £10,500 | 0 | 0 |
|---------------|---------|---|---|

The expenses of "The Law Journal" must be heavy. The two volumes of 1863 contain about 2000 pages of quarto, equivalent to about 125 double sheets of octavo. I have before me a printer's estimate, which gives the following amount as being the probable expense of printing 4000 copies of a volume, in Long Primer type, in all respects like the issue of "The Law Journal" for 1863.

| | |
|---|--------------------|
| 4000 copies at £16 10s., including all expenses of printing and paper, but exclusive of stitching and and wrappers = £16 10s. per sheet | £2,062 10 0 |
| There are seventeen Reporters and three Editors, call the expenses of these £2000. The account will stand thus:— | |
| Net receipts (less trade discount) | £10,500 0 0 |
| Deduct | 4,062 10 0 |
| | <hr/> |
| Balance | <u>£6,437 10 0</u> |

To this must be added the costs of offices, clerks, warehousing, advertisements, travellers' salaries and expenses, and perhaps something more than I have allowed in the above estimate for corrections; call this the sum of £1437 10s. This will give as the profits of "The Law Journal," assuming my estimates to be correct, about £5000 per annum. This no doubt would leave a valuable property to the proprietors, but a slight examination will shew that this amount would be quite insufficient to provide the staff of Reporters, which is now generally admitted are required for properly reporting the decisions of the various Courts, at salaries sufficient to ensure the due discharge of the Reporters' duties. Thus, twenty-five Reporters at salaries of only £300 each a year, would absorb the whole profits of the concern.

I venture therefore respectfully to submit, that I have made out the proposition which I laid down at the outset, that it is to the existing competition are mainly to be ascribed the defects in Law Reporting of which the profession complain, and that such competition operates either in increasing the costs of the Reports to the profession or in awarding a mere pittance to the labourers in the vineyard, and in some cases in both ways. Secondly, that the commercial success of some of the existing publications is really no exception to the principle. The inevitable inference from the above calculations seems to be that there is no room for commercial profit in a properly-constituted system of Law Reporting. I have trespassed so long on the attention and time of the Committee that I will endeavour to be as concise as possible in the suggestions I take the liberty to submit for their consideration,—

1. I think there ought to be two series of Reports and two only, one

somewhat after the style of "The Weekly Reporter" or rather what it professed to be, viz., an epitome of the cases published weekly. I think the number of persons who now take in the double series would, as they do now, readily pay the small addition which would be required.

2. I think the other series should be more elaborate, although published with reasonable promptness.

3. I think there ought to be appointed for each Court two Reporters who should not (or at all events the senior) be permitted to practise. Reporting is a most laborious occupation, requiring indeed some knowledge of law and practice, and some power of analysis, but eminently requiring industry, without which the highest attainments are little worth. The Reporter should always remain in Court, and his report should be a "photograph" of the case. But if he be allowed to practise, the great prizes of the profession and the captivating nature of professional business, as compared with the drudgery of reporting, will prove too strong even for Spartan virtue. And were he ever so conscientious on this point he could really at times exercise little choice in the matter. The capricious and exacting demands of the profession are such that the Reporter would be compelled to postpone his duties as Reporter to his duties as counsel. The evils consequent upon allowing Reporters to depend for income upon their professional practice are patent at the present day.

4. I think the judgments should be reviewed and revised by the respective Judges. I speak with diffidence on this point, because I know that a different opinion prevails in the minds of men whose opinions are entitled to the greatest weight, but if I may say so without presumption, this notion appears to me to spring from a misapprehension of the object and purpose of a reported case. A reported case is no evidence of anything as between the parties, it is simply a record of what on a given state of facts is decided. For every purpose, did our system admit of prospective decisions, a reported case would be just as valuable were the facts purely fictitious. It is said that the reported decisions are valuable as operating as a check on the Bench; but surely that object, if required at all, is far better accomplished by the independence of the Bar and of the newspaper press. On the other hand, let me consider the effect of confining a Judge rigidly to the very words he may have casually used in his judgment. It does not perhaps express his meaning, but must nevertheless be recorded as his enunciation of fact or law as the case may be. Evidently this would render the reported decisions of little, or much less value than they are at present. Moreover, some pruning *must* be applied, or no series of Annual Reports could otherwise contain the cases decided in the year, and, if so, who so proper to revise his

judgment as the learned Judge himself? I venture, therefore, to suggest, though without going the length of Sir J. Leach, who abridged all his judgments with his own hand, that the learned Judges should have the option of revising their judgments.

5. I think copies of all the printed pleadings ought to be furnished to the Reporters, and that they should have the privilege of obtaining, gratis, copies of any order or decree that might be required. I have spent days in the office making extracts.

6. I think if two adequately-paid Reporters were appointed for each Court, it would be wholly unnecessary to make any invidious rule excluding from citation in Court any other than the Reports sanctioned by the Profession or the State. The unauthorized Reports have grown up from the indolence and carelessness of the authorized Reporters, and, in later times, from the inability of the authorized Reporters to compete with the former in price, and when these causes are removed the unauthorized Reports would pass away as they came into being.

7. I should be disposed to think that if the subscription for the Reports were fixed at six guineas per annum for the entire series, or two guineas for the weekly series, if taken alone, a sufficient circulation could be attained, at all events for the present to make a beginning. Whether the Reports could be made wholly self-supporting is a difficult question. The difficulty will arise when to the Superior Courts of Law and Equity come to be added, in any arrangement to be made, the Admiralty and other Courts in which the Reports possess little circulation.

Apologising for the length to which this paper has run, and for the hasty manner in which it has been written (for it was not until the last moment that I determined on addressing the Committee), I have the honour to remain your most obedient servant,

J. W. DE LONGUEVILLE GIFFARD.

To the Committee.

I ought to add, that in the above calculations I have taken the circulation and value of all the various Reports from common report.

MESSRS. HARRISON, DEAN, AND DICKINS.

2, New Square, Lincoln's Inn,
16th February, 1864.

SIR,

In answer to your letter of the 20th ult., we, the undersigned, beg leave to offer the following remarks.

Law Reporting might be conducted on the principle of exclusive

monopoly, or, as at present, partial monopoly, or on that of free competition.

The advantages of a system of free competition are supposed to be, that Reports so compiled are thoroughly independent, and that their success depends on their merits; but the freedom of the press and the publicity attending all legal proceedings are a sufficient guarantee for the independence of Reporters; and any increase of merits would be more than counterbalanced by an increase in the existing confusion of our case law.

By the partial monopoly now accorded to the existing regular Reports a considerable sale is secured to them; and, owing thereto, they are diffuse, ill-digested, tardy and irregular in their appearance, and extremely expensive; and the interests of the Reporters, from their profits depending on the quantity, not on the quality, of their work, are in direct antagonism to those of the profession and the public.

The plan of having a separate series of Reports for each branch of the Court is an obstacle in the way of obtaining a well-digested chronicle of judicial decisions.

But the great and increasing evil of the present system is the number of Reports, and the enormous quantity of cases reported, which causes delay in the proceedings and uncertainty in the decisions of the Courts, and renders it extremely difficult for counsel to advise with any certainty, thereby causing a more frequent resort to litigation.

On the last grounds, some amendment of the existing system of Law Reporting becomes a matter of national importance.

The objects to be aimed at are a better selection and arrangement, and a considerable diminution in the number, of cases reported; and a more prompt and regular issue of the Reports, at a reduced price.

A system of exclusive monopoly appears to offer the only means of attaining these objects.

The concurrence of the Judges in such a system should be at once applied for; and, as it would be necessary to provide some compensation for existing rights, the sanction of Parliament would probably be required.

It is suggested that the principle upon which the reporting in Equity should be conducted, is, that the Reports in all the Courts should be entrusted to one body of Reporters, under the guidance of chiefs of experience and ability, and competent and expected to exercise discrimination in the selection and arrangement of cases for reporting.

The following suggestions refer only to the Courts of Equity, but may be readily adapted to other Courts:—

1. There should be a temporary and a permanent set of Reports.

2. The temporary should give a short report or note of all cases deserving notice, not later than the week after they are decided.

3. The permanent should give a due report of such cases from the temporary as are of sufficient importance to become permanent.

4. The permanent to commence from the 1st of January, and issue in three parts.

5. The first, comprising the cases decided before the 1st of April, to issue by May; the second, comprising those before the Long Vacation, by the 21st of October; and the third, comprising those before the 1st of January, by February.

6. The two first to have each its temporary detachable tables and index; the third full and permanent ones to all the three parts.

7. The extracts from decrees or orders worth giving, not entered in time to print with the cases, might be given in a part issued after entry.

8. The permanent Reports to be cited or quoted by their year, and no other Reports to be allowed to be cited or quoted of any cases decided during the periods they embrace.

9. The advantages of the temporary would be, to give notice at once of all deserving notice, as quickly and as well as any present Report, and to prepare for scrutiny what should be permanent.

10. Those of the permanent would be, not to embody as case law anything not material, and to give what is given in well-considered shape and order, better than can be done by any present Report.

11. The style of printing the present weekly Reports might be adopted for the temporary.

12. The style of the regular Reports is very wasteful in space, and so in bulk, and the marginal notes and references might be given in the same way as is now done in the weekly.

13. Looking to the sittings of the Courts and the weekly Reports, the expense of the temporary should not exceed 10*s.* or 12*s.* a year.

14. The expense of the permanent is not so easy to anticipate, but it may be well supposed that it would not exceed four or five guineas a year.

15. There should be six senior Reporters or Editors, and twelve junior Reporters at least, for the six Courts, to be remunerated by salaries.

16. They should be selected in the first instance from the present Reporters, on account of skill and claim.

17. The present or another Committee to be authorized to make the selection.

18. And to allow compensation to any not selected, or wishing to retire, by annual or other payments.

19. The Editors to be a council, three to be a quorum; to decide

by votes, if equal, the senior to have a casting vote; and to decide what cases are to be reported and in what manner.

20. And to remove, or change or appoint any Reporters in future.

21. The Court should never be without a Reporter present, and in general there should be two by way of check and aid.

22. In case of illness or unavoidable absence, any Reporter to appoint his sufficient deputy, to be approved by the council.

23. Any two of the Judges in Equity in their discretion to remove any Reporter.

24. The Judges will no doubt give their usual aid, and the profession will of course be much indebted to them for any further imprimatur they may think fit to attach to the Reports.

25. The copyright to be vested by the Reporters on appointment in trustees, the first to be named by the Committee, with provisions for continuing their body.

26. The trustees to fix from time to time the price of the Reports, and apply any profits, after all expenses, salaries, and charges paid, for such purposes and in such manner as they think fit.

27. The council to appoint or change a law publisher or law publishers of the Reports.

28. The Committee to be authorized to allow compensation to any present publisher or proprietor of Reports by annual or other payments.

29. The council to arrange with the publisher or publishers the style and terms of printing the Reports.

30. And to act in all things as editors, paying over any balances payable to them to the trustees.

31. The Reporters being allowed to practise, and where necessary, to appoint deputies, and, so numerous as suggested, the salaries of the senior should not exceed £300, nor those of the junior £200 a year.

32. The trustees might be authorized to make additions to the salaries from any profits.

33. The system may be fairly expected to be more than self-supporting, and the preliminary expenses, including compensations, might be provided for by parliamentary grant, or from the Suitors' Fund, or by the Inns of Court, or from private sources.

34. In the event of any difference, or of any matter not specified, the Lord Chancellor to be requested to determine the same, or to appoint for that purpose a Judge or Judges in Equity.

35. The Committee to communicate with the Lord Chancellor and the other Judges in Equity.

36. And, if necessary, to bring the subject forward in Parliament.

W. H. HARRISON.

R. RYDER DEAN.

WM. PARK DICKINS.

Leeds Law Society, 70, Albion Street,
25th February 1864.

SIR,

On the other side I send you the resolutions of the Leeds Law Society, to which I venture to ask your attention, at the same time thanking you for the courtesy in addressing myself and partners on the subject. It would be well for the legislation of this country if we pulled more together, and if more deference were paid to the wishes and suggestions of the two branches of the profession.

I thought it better to have the discussion of the Law Society and their opinion rather than give my own and my partners.

It has often struck me that if the two Houses of Parliament can have their proceedings and evidence ready for reading the next morning, it is not too much to expect that the lawyers of all classes should ask to have their Reports in a week or two. But we all see the difficulties, and if you think it worth while to ask us anything further I am sure we shall try to help you.

If it be needful to apply to Parliament I would suggest that you might get help from the Law Societies. Mr. Williamson, Secretary of the Incorporated Law Society, and Mr. Philip Rickman, 35, Chancery Lane, Secretary of the Metropolitan and Provincial Law Society, would help you. Williamson, I know, has a list of them.

James T. Hopwood, Esq.

Hon. Sec.,

Benchers' Reading Room,

Lincoln's Inn, London.

I am, Sir,

Yours faithfully,

EDWIN EDDISON,

Hon. Sec., &c.

Read letter from Mr. J. T. Hopwood, Hon. Sec. of the Committee recently appointed by the Bar, to consider the present system of Law Reporting with a view to its amendment, dated 20th of January, 1864.

- Resolved—1. That the present system of reporting the judicial decisions of the United Kingdom requires amendment.
2. That there ought to be such a system of reporting adopted as shall be considered authentic, and recognised as such by all the Judges of the Superior Courts of Law and Equity.
 3. That the Judges of each Court ought to appoint Reporters.
 4. That there ought to be one authorized Report only of the decisions of each Court.
 5. That it is desirable that such Reports should regularly appear, and at intervals of not less than one month from the time of the decision.

At the meeting on the 25th of February the Chairman reported that, on Lord Chancellor Westbury's invitation, he had had an

interview with his Lordship, who expressed his hope that the Committee would bring their labours to a conclusion as soon as possible, as his own action in the House of Lords on the subject of the Law Reporting system was stopped by their proceedings; and that his Lordship also wished to suggest to the Committee whether it might not be advisable for them to leave the so-called unauthorized Reports as they are at present, and to confine themselves to the preparation of a scheme for the thorough improvement of the authorized Reports. His Lordship thought that such a scheme, established under the direction of a reporting council, would probably be self-supporting; but to guard against any miscalculation, the heads and leaders of the profession, and possibly the Inns of Court, might be asked to subscribe to a guarantee fund.

The importance of this communication and the courtesy of the Lord Chancellor in making it were fully appreciated and recognised by the Committee, but it was felt by them that their own independent inquiries must proceed much further before they could be in a position to suggest any scheme for consideration among themselves, or deal with his Lordship's suggestions, although their value was felt and acknowledged by the Committee, and the Chairman was authorized to communicate with the Lord Chancellor accordingly. But the Committee considered that in the then inchoate state of their proceedings, and having regard to the suspended state of the judgment of the individual members, it would be premature to pass any resolution which would amount to an expression of the opinion of the Committee upon any of the specific suggestions so kindly made by his Lordship, several of which, however, as the result shews, were in accordance with the views ultimately adopted by the Committee, and afterwards confirmed by the Bar, and which have been since successfully carried into effect by the Incorporated Council of Law Reporting. In order that sufficient time might be taken to afford an opportunity for the consideration by the Committee of the selected papers, at a meeting of the Committee held on the 17th of March, it was resolved that the Committee do adjourn until the 14th of April next (thus allowing a month's time for the purpose), and that the Secretaries do communicate to the members of the

Committee not present at that meeting the fact of such adjournment, with an intimation that the Committee think it would be very convenient if any suggestions or schemes intended to be submitted for consideration should be sent in to the Secretaries some time before the next meeting for circulation among the Members of the Committee.

Previously to the meeting appointed for the 14th of April several schemes had been sent in, and at that meeting there was a full attendance, and on the motion of Mr. Henry Matthews, seconded by Mr. Montague E. Smith, it was unanimously resolved :—

That the Secretaries be requested to write to the members not present at that meeting, stating that a plan for the discussion of the several schemes had been arranged, and that it was thought very desirable that there should be a full attendance of Members at the next meeting, and requesting their presence, when the following questions would be considered :—

I. Whether the Report of the Committee should be based upon one and which of the following principles :—

(a.) The principle of better recording judgments and proceedings by the Officers of the Court.

(b.) The principle of Official Reporting by persons appointed and paid by the State.

(c.) The principle of Reports published under the control of a Council nominated by the Bar, the Judges, and the Inns of Court, or by any other body.

II. Whether the principle of exclusive citation shall be recommended by the Committee.

Lastly, the expediency of holding for the future two Meetings a week in order that the labours of the Committee may be brought to a close as speedily as possible.

At a meeting held on the 21st of April, 1864, at which there was a full attendance: It was moved by Mr. Serjeant Pulling, and seconded by Mr. Joshua Williams :—

That the joint proposal of Mr. Serjeant Pulling, Mr. Joshua Williams, and Mr. Westlake be adopted (1).

The motion was supported by these three gentlemen only: it was negatived by the nine other members attending, namely, Mr. Amphlett (the Chairman), myself, Mr. Druce, Mr. Lindley, Mr. Quain, Mr. Dickinson, Mr. Wills, Mr. Matthews, and Mr. Hawkins. It was therefore lost by a majority of three to one; the majority consisting of five Members of the Equity Bar and four Members of the Common Law Bar.

At the same meeting it was resolved unanimously that the meetings for the future be held twice a week, viz., on Tuesdays and Thursdays, at half-past 4 o'clock, and that notice thereof be sent to the absent members.

At the next meeting, held on the 26th of April, there was again a full attendance. The minutes of the last meeting were read and confirmed. It was then moved by Mr. Montague Smith, and seconded by Mr. Serjeant Pulling—

That the Committee recommend the principle of Official Reporters, such Reporters to be appointed by the Lord Chancellor, and to be paid by the State. The Reports to be sold under the authority of Government—compensation being afforded to existing interests.

With the consent of the mover and seconder the discussion on this motion was postponed in order to give precedence to the following, moved by Mr. Joshua Williams and seconded by Mr. Westlake.

1. That the Report of this Committee do contain an expression of its opinion that it would be desirable that all judgments of the Superior Courts should as far as practicable be written.
2. That the Report of this Committee do contain an expression of its opinion that it would be desirable that all judgments of the Superior Courts not committed to writing before delivery should be committed to writing under the authority of the Court as soon as possible after delivery.
3. That the Report of this Committee do contain an expression of its opinion that it would be desirable that access to all

(1) Printed *postea*, p. 149.

the judgments of the Superior Courts should be afforded to every member of the profession as speedily and cheaply as possible, and that it is not desirable that access to any of those judgments should be afforded to any members of the Bar in preference to others unless they be officially charged with and responsible for the duty of affording access to such judgments to the profession generally by the publication thereof as speedily and cheaply as possible.

After discussion the first question was put to the vote separately and the members present were equally divided, and thereupon the Chairman gave the casting vote against the question. It was therefore negatived. After some consideration, and influenced probably by the expression of opinion by the members against an official system under Government control in any form, Mr. Joshua Williams withdrew the other questions; and Mr. Smith did not proceed with his postponed motion. Thereupon Mr. Dickinson moved and I seconded a resolution:—

That in any system of Reports recommended by this Committee the Reports should be prepared by Reporters under the supervision of competent Editors, the Reporters and Editors being appointed and removable by some superior authority.

This motion was carried without any expressed dissent, and in that sense unanimously.

It was further moved by Mr. Dickinson, and seconded by Mr. Druce:—

That no case reported by Reporters under such supervision and control should be quoted from any other Report; but this not to interfere with the quotation from any other Report of cases not already so reported.

After some discussion the further consideration of this motion was adjourned.

At a meeting held on the 28th of April the minutes of the last meeting were read and confirmed. It was moved by Mr. Dickinson, and seconded by Mr. Lindley, and carried unanimously:—

That the proceeds to arise from the sale of the Reports should be applied in payment of or making good any guarantee which may be given in respect of the remuneration of the

Editors and Reporters and other expenses of production, management, and sale.

I also gave notice that at the next meeting I should move as follows:—

1. That the appointment and removal of Editors and Reporters be vested in a Council of Barristers.
2. That such Council consist of Members to be appointed as follows: Two by each of the Inns of Court; two by the Incorporated Law Society; and, in case of assistance being given by the Government, then two more to be appointed by the Lord Chancellor.
3. That the appointment of the Reporters in each Court be subject to the approval of the presiding Judge.

Mr. Dickinson's motion, the consideration of which was postponed at the last meeting of the Committee to be discussed after the foregoing resolutions by me, was again postponed, and it was ordered that the Secretaries be requested to communicate to the absent members the resolutions already adopted and the notice of motion given by me, and earnestly to request their presence at the next meeting.

The notices were duly sent as requested, and the next meeting was held on the 3rd of May and there was a full attendance, including Sir Hugh Cairns, Mr. Selwyn, Mr. Quain, and Mr. Wills. The minutes of the last meeting were read and confirmed. It was moved by me and seconded by Mr. Dickinson and carried without dissent:—

That the appointment and removal of the Editors and Reporters be vested in a Council.

It was then moved by me and seconded by Mr. Westlake and carried in like manner:—

That such Council consist of Members to be appointed as follows: Two by Lincoln's Inn; two by the Middle Temple; two by the Inner Temple; one by Gray's Inn; one by Serjeants' Inn; two by the Incorporated Law Society; and, in case of assistance being given by the Government, then two more to be appointed by the Lord Chancellor.

It was then moved by me and seconded by Mr. Serjeant Pulling and carried:—

That the appointment of the Reporters in each Court be subject to the approval of the chief or presiding Judge.

Mr. Dickinson then brought on his adjourned motion, namely :

That no case reported by Reporters under such supervision and control should be quoted from any other Reports ; but this not to interfere with the quotation from any other Report of cases not already so reported.

This motion was negatived by a majority of one, and was therefore lost.

I was requested and undertook to prepare a rough draft of a scheme founded on the resolutions already passed for consideration at the next meeting, which I did, and the following is a copy.

LAW REPORTING.

The Committee having *provisionally* adopted the following resolutions :—

- I. That in any system of Reports recommended by the Committee, the Reports should be prepared by Reporters under the supervision of competent Editors, the Reporters and Editors being appointed and removable by some superior authority.
- II. That the proceeds to arise from the sale of the Reports should be applied in payment or making good any guarantee which may be given in respect of the remuneration of the Editors and Reporters, and other expenses of production, management, and sale.
- III. That the appointment and removal of the Editors and Reporters be vested in a Council.
- IV. That such Council do consist of Members to be appointed as follows :—two by Lincoln's Inn, two by Middle Temple, two by Inner Temple, one by Gray's Inn, one by Serjeants' Inn, two by the Incorporated Law Society, and in case of assistance being given by the Government, then two more to be appointed by the Lord Chancellor.
- V. That the appointment of the Reporters in each Court be subject to the approval of the chief or presiding Judge.

And the Committee having also *provisionally* negatived a resolution.

- VI. That no case reported by Reporters under such supervision and control should be quoted from any other Report, but this not to interfere with the quotation from any other Report of cases not already so reported.

The following scheme based upon the principles of those resolutions is proposed for the consideration of the Committee.

As competition is to be left entirely free, the first care must be not to add to the existing evils by increasing the number of Reports, and any plan to be successful must be such as would absorb some of the existing series. The competition that has to be met is that of a system in which good reporting is the means, and commercial profit the end. The system proposed to be established, and which would have to meet this competition, is one in which profit will be the means only and good reporting the end.

The proposed system is also to be *self-supporting*, and must rely upon its merits for success; it must also be moderate in cost, and must, therefore, rely upon an extensive circulation. For these purposes it must entitle itself to the general confidence and support of all branches of the profession—the Judges, the Bar, and the general practitioners,—and must, therefore, be—

1. Comprehensive—that is, it must embrace the decisions of every Court that can be properly referred to as authorities for principle, or as guides for practice.
2. Complete—that is, it must be in the form which experience has shown to be best calculated to meet the wants and conveniences of the profession.

I propose, therefore, a *double series for one subscription*, but divisible at the option of the subscriber.

The first, or WEEKLY SERIES, to be published once a week throughout the legal year, and to comprise Reports or Notes of every case which is likely to be of use to the practitioner; and, as far as practicable, to keep pace with the Courts, so that there be no unavoidable arrear or delay in publication.

This Series to be conducted by a numerous staff of Reporters, at comparatively small salaries, acting under the supervision of two Editors, at more liberal salaries.

The *minimum* salaries to be *guaranteed*, but to be increased out of profits to a *maximum* to be settled by the Council. This Series to be made up in half-yearly volumes and accompanied by a proper Index and List of Cases.

The *second*, or PERMANENT SERIES, to be published quarterly, or at earlier periods to be settled by the Council, so as to comprise, as far as practicable, every decision up to the rising of the Courts for the Long Vacation; the object to be accomplished being that the Case-law of the year should be properly reported and published within the year. The cases to be published in this Series should be *carefully selected* by the Editors and Reporters, upon the principle of rejecting all cases which pass without proper argument and discussion, or which are

repetitions of the principle of cases already reported, or which are otherwise useless as precedents, and of including—

- I. All cases which introduce or appear to introduce a new principle or a new rule.
- II. All cases which materially modify an existing principle or rule.
- III. All cases which settle or materially tend to settle a question upon which the law is doubtful.
- IV. All cases which for any reason are peculiarly instructive.

In all cases where written judgments have not been delivered, the judgment before publication should be submitted to the Judge for his revision, and in the case of written judgments also whenever the Judge desired it.

The *Permanent Series* should contain the decisions of each Court separately, and be made up in yearly volumes, and each volume accompanied by a proper Index and List of Cases. The October number should also be accompanied by a Digest of the Cases reported in the year. And also a List of the Cases reported in the *Weekly Series*, and the *reasons for their rejection*.

The Reporters of the Permanent Series should be under the supervision of two Editors, and be sufficiently numerous to allow of the attendance in Court from its sitting to its rising, of one Reporter in each Court. No restriction should be placed upon the right to practise of either Editors or Reporters, but it must be a fundamental requirement, involving the professional honour of the Barrister, that the duties whether of Editors or Reporters be faithfully and *punctually* discharged. The salaries of the Editors and Reporters should be upon such a liberal scale as to secure the services of all such of the existing authorized Reporters as would be able and willing to undertake the duties, and to these the appointments should be first offered. As in the case of the Weekly Series, a *minimum* amount of salary should be *guaranteed* to the Editors and Reporters, to be increased out of profits to a *maximum* to be fixed by the Council.

I estimate the amount of the minimum salaries, to be guaranteed to the Editors and Reporters of the two Series, at £8000; the cost of printing, sale, and distribution at £10,000; and the cost of management at £2000, making a total of £20,000.

The duties of the Council would involve the arrangement of the staff of Editors and Reporters of both Series:—Also the superintendence and control of the financial and other business connected with the printing, publication, and sale of the Reports. The Council would also ascertain and settle the amount and proportion of profits (subject to audit by an Auditor to be appointed by the Editors and Reporters), also prepare and publish an Annual Financial Statement, and a detailed Report of the results of the working of the system.

This Report should embrace a notice of any anomalies, incongruities, inconveniences, or defects in the law that might be evidenced by the décisions of the year, and to be made ancillary to legislative amendment. For these purposes the Council would require the services of a Secretary and two or more Clerks. The Secretary should be an able and experienced man of business. They would also require convenient Chambers in one of the Inns of Court, and the costs of these objects I have estimated at £2000 per annum.

To meet these expenses I propose an Annual Subscription (payable in advance at the commencement of the legal year) of *Six Guineas* for both Series, and to include the Annual Digest, Financial Statement, and Report. This subscription may be subdivided thus :—For the Weekly Series only, *Three Guineas*. For the Permanent Series, Digest, Financial Statement, and Report *Five Guineas*. I estimate a circulation of *Five Thousand*.

Subscription lists to be opened immediately upon the approval of the scheme by the Bar.

In aid of the Subscription List, I propose a guarantee for three years equal to the amount of the minimum guaranteed salaries. This guarantee I suggest should be partly by the Inns of Court, and partly by private subscription. Lincoln's Inn and the Inner Temple should be asked to contribute each £1500. The Middle Temple £1000, and and Gray's Inn £500. The remainder should be guaranteed by private subscription. If the subscription list reached £3500, the guarantee would be unnecessary.

I do not propose that any application be made to Government for direct pecuniary assistance ; but I think the Government may, with propriety, be requested to take a sufficient number of copies to supply the requirements of the various functionaries connected with the administration of justice at home, and in our Colonies and dependencies abroad. If Government took for this purpose 1000 copies, I suggest that the Lord Chancellor should have the nomination of two additional members of the Council.

I propose also that the Editors and Reporters should be so far recognized as officers of the Courts, and connected with the administration of justice, that the Judges of the several Courts should be requested, wherever such accommodation can be afforded, to appropriate convenient places to be occupied by the Reporters, apart from the Bar, the Solicitors, and the Suitors, and also to allow the Editors and Reporters of the Permanent Series to have access to all such papers and documents as the Judges can control.

The Council should have power to make arrangements with the proprietors of "The Law Journal" for the acquisition of their goodwill

in that publication. The terms to be made good out of surplus profits, and be a first charge thereon after payment of expenses, and the guaranteed salaries.

The Council to arrange with one or more publishers or printers to undertake, under their superintendence, the printing, sale, and distribution of both Series of Reports upon the security of the Subscription List, and Guarantee Fund so as to relieve the Council from all personal liability in respect of all expenses, including guaranteed salaries and cost of management.

The Copyright in the Reports to be the property of the Council, and vested in Trustees of their nomination.

W. T. S. DANIEL.

LINCOLN'S INN,
5th May, 1864.

At a meeting held on the 5th of May I introduced my rough draft scheme already printed, and the same was taken into consideration. Meetings of the Committee were afterwards held on the 10th, the 12th, the 19th, the 23rd, and 26th of May, and on the 6th and the 9th of June, for the purpose of discussing and settling the various clauses of the scheme to be submitted to the Bar, and at the meeting of the 9th of June the scheme was finally settled. I was then requested and undertook to prepare a draft report of the scheme and the proceedings of the Committee to be submitted to the next meeting for approval, and to be presented to the meeting of the Bar to be held for revision of the Report. At the next meeting, held on the 14th of June, my Report was considered, and after some amendments was approved, and directed to be presented accordingly. The following is a copy:—

REPORT OF THE COMMITTEE

*Appointed at the Meeting of the Bar held in Lincoln's Inn Hall, on
Wednesday, the 2nd day of December, 1863.*

THE Committee thus appointed were entrusted with the duty of preparing a plan for the amendment of the present system of preparing, editing, and publishing Reports of judicial decisions, and were requested to report thereon to a future meeting of the Bar.

The Committee have, after much discussion and deliberation, pre-

pared the scheme hereinafter set forth, and they recommend the same for adoption.

The Committee abstain from discussing in this report the merits of the scheme, but confine themselves to a general statement of their proceedings.

The first step taken by the Committee was to apply to the Benchers of Lincoln's Inn for the use of a convenient room in the New Hall and Buildings for the purpose of their meetings. This application was willingly acceded to by the Bench, and the Committee have accordingly held their meetings in the Benchers' reading-room at Lincoln's Inn.

At the first meeting of the Committee, held on the 22nd of December, 1863, they unanimously appointed Richard Paul Amphlett, Esq., Q.C., the permanent chairman of the Committee. They have since held twenty-two meetings, and Mr. Amphlett has presided over every one.

At their first meeting the Committee also accepted the services of Mr. James Thomas Hopwood, of Lincoln's Inn, as honorary secretary. The duties of the secretary having increased and become onerous, the Committee shortly afterwards accepted the services of Mr. William Dundas Gardiner, of Lincoln's Inn, and those two gentlemen have ever since acted as joint secretaries, and have been unsparing of their time and labour in rendering valuable services and assistance to the Committee.

Before entering upon the consideration of any scheme of amendment to be suggested by any of its members, the Committee resolved to issue a circular to the Profession inviting observations and suggestions; such circular was as follows:—

The Committee are anxious, in order the better to discharge the duty entrusted to them, to collect the opinion of the Profession upon the subject of Law Reporting; and for that purpose the Committee are desirous of receiving any observations which you, either alone or in conjunction with others, may be so obliging as to make upon what, in your opinion, are the advantages or disadvantages of the present system, and also any suggestions, either as the principle or details of any amendment of the existing system which you may think desirable.

This circular was sent to the Judges, and extensively distributed among both branches of the Profession. In reply, the Committee received numerous and valuable observations and suggestions. Although these exhibited differences of opinion as to the proper mode of amending the existing system of Law Reporting, they exhibited, at the same time, a very general desire for amendment; and the Committee have been greatly assisted in the discharge of their duties by the observations and suggestions thus received.

The Committee also, before entering upon the consideration of any plan of their own, appointed a sub-Committee (consisting of the Honourable George Denman, Mr. Serjeant Pulling, Mr. Henry Matthews, Mr. Quain, and Mr. Westlake) to inquire into the mode of recording and reporting judicial decisions in the various European States, and in the United States of America.

The sub-Committee undertook these duties, and reported as follows (1):—

The sub-Committee thus appointed have received valuable communications from a number of competent foreign jurists, and other gentlemen professionally or officially connected with the chief tribunals of the countries embraced in the inquiry, and thus conversant with the subject-matter of the reference.

The sub-Committee have by this means obtained information which they recommend to the Committee as worthy of their attention.

To begin with the system adopted in France. Every judicial decision is required to be in writing, and to be *motivé*, i. e. to disclose on the face of it the grounds and reasons on which it is founded; and when the signature of the President of the Tribunal has been affixed to these solemn judgments, it is the business of the *Greffier* to see them entered on the register of the Courts, and only one version of them can therefore ever legally appear.

The Records of the Tribunals thus containing an authentic version of every decision, the Legal Profession and the public have at all times access to the register to ascertain what has from time to time been decided, and it is competent for any one to make from the register a selection of such decisions for publication. The collections of decisions by Sirey and Dalloz, and Ledru Rollin, have been thus prepared. Though these works are deservedly held in great esteem, they are not official publications, any more than any series of English Law Reports.

In Norway and Sweden the judgments of the ordinary tribunals are always given in writing, and in every case entered on the protocols of the Courts; and in the Supreme Courts of Appeal, when the votes of the Judges are given separately, it is the business of the Registrar of the Court to enter on the records of the Court, not only the final judgment or conclusion, but the grounds and reasons of the decision of each Judge. Here, as in France, therefore the records of the Court supply ample materials for the preparation of books of reports or collections of decisions, and such publications are left wholly to free trade.

In Denmark, though it is competent for any one to take down, print and publish reports of cases and decisions of which he has himself taken notes, the only authentic version of judicial proceedings is the entry in the *dombistocol*, under the hand of the Judge, containing not only the conclusion itself to which the Court has arrived, but the facts and reasons and grounds of the decision; and from these, selections of cases which may serve for precedents are made by the direction of the Courts, though it would seem that other selections made by competent private publishers would be received with equal attention.

In Italy, all judicial decisions, whether civil or criminal, must be read aloud in open court, with the grounds in fact or law set out at length; and authentic minutes of the judicial opinions so pronounced are duly entered in the register of the Court; and compilations of the principal decisions of the four Superior Courts

(1) See *ante*, p. 99.

of Cassation at Milan, Florence, Naples, and Palermo are published by voluntary editors, whose province it is to make a proper selection of cases for publication, to give an analysis of them in the head and marginal notes, and to explain or illustrate them in other annotations. These compilations only so far receive the protection of the State that a certain number of copies are subscribed for out of the public treasury. The compilation entitled "*La Legge Romana*" is a journal of judicial and administrative proceedings for the kingdom of Italy, published at short intervals (the judicial three times a week), and containing in an abridged form notes taken from the minutes in the registers of all the important cases disposed of.

In the United States of America there is no law requiring either written decisions or a record or register of the grounds and reasons of the decisions; but the judgments are generally in writing, and in most of the States, and in the Supreme Court of the United States, there are now official Reporters, remunerated by salary as well as by a portion of the profits of the publications. These Reporters are generally appointed by the State, and are always removable at the discretion of the appointing power, but enjoy in the performance of their duties the same freedom as the authors of our own Law Reports. In the Superior Court of the city of New York, the Judges publish the reports of their own decisions, choosing an editor from among themselves. As a rule, the official reports omit the arguments of counsel, and give only a narrative of the facts and the copy of the written judgments. The official publication rarely appears for many months after the judgment is pronounced, and until that time publications called the "*Law Reporter*" and "*Law Journal*" are referred to, but do not profess to give more than the most important cases. No suggestion is made that the Official Reporters are less efficient or more dilatory than their predecessors under the voluntary system, nor is it found that they are subject to any improper influence in the discharge of their duties; and in the State of New York the Official Reports are required by Law to be sold at a much smaller price.

The Committee, with the information they had now before them, proceeded to consider proposals for amendment.

The first proposal discussed by the Committee was a joint proposal by Mr. Serjeant Pulling, Mr. Joshua Williams, and Mr. Westlake, and was as follows (1):—

The present system has arisen from the default of the proper records of their own proceedings being kept by the Courts. The privilege which the Bar has of Reporting comes to this, that any barrister may inform the Court of that which the Court might much better know from its own records. No remedy appears to us sufficient which does not strike at the root of the evil. It would be desirable that all judgments should be written; but this may be thought impracticable. We therefore propose as follows:—

It should be the duty of the Registrar, in all cases in which judicial opinions are pronounced, to record the names of the parties, and of their counsel and attorneys or solicitors, the authorities cited, the judicial opinion or opinions delivered, and the formal judgment, order or decree; also the substance of the

(1) See *ante*, p. 139.

pleadings and the case, and the points relied upon by counsel, wherever a mere transcript of the judicial opinions actually delivered did not render any other summary of the case, pleading and points, unnecessary.

Each Registrar should be assisted by one or more shorthand-writers, whose duty it should be to take down all remarks of the Judges, especially their judgments, and any remarks by counsel which may be necessary to render them intelligible.

The shorthand-writers should be allowed to furnish notes to applicants for their own profit.

The shorthand-writer's notes should be written out as soon as possible, and furnished to the Registrar.

It should be the duty of the Registrar from these notes and his own, with the assistance of the Judges, the other officers of the Court, and the counsel and attorneys or solicitors employed, to prepare such record of the case as aforesaid.

The record should be printed as soon as possible by the Queen's printers, on paper of a given shape, each cause being on separate paper, and the transactions of each day being printed within a week at furthest.

The records so printed should be published and sold at a low price, with liberty to any person to reprint them.

The record so made should be amended by the Court on sufficient evidence of its inaccuracy, and should be evidence in the same manner as the records of the Courts now are.

All printed pleadings and evidence should be on paper of the same size and shape with that of the records, so that the printed documents relating to each cause might be bound up, as those relating to Privy Council causes now are in Lincoln's Inn library; and copies of all such printed documents should be furnished to the libraries of the Inns of Court and the Incorporated Law Society.

If a Ministry of Justice should be established, which we think very desirable, it might be charged with the preparation of an Annual or Semi-annual Digest, and with supplying marginal notes to the records of cases, but so that such records might also be bought without such notes by those who might think it important to get them sooner.

After discussion this proposal was negatived.

Mr. Montague E. Smith, Q.C., moved a resolution as follows:—

That the Committee recommend the principle of Official Reporters, such Reporters to be appointed by the Lord Chancellor, and to be paid by the State; the Reports to be sold under the authority of Government, compensation being afforded to existing interests.

The discussion upon this resolution was, with the consent of Mr. Smith, postponed until it should be seen whether any scheme of amendment would be sanctioned by the Committee which should not be based upon Government patronage and control.

Several proposals in various forms, but each founded upon the principle of establishing a system of Reporting under the regulation and control of the Bar, were next laid before the Committee; these

formed the basis of the scheme adopted. Mr. Smith's motion was therefore not pressed.

Mr. Dickinson moved a resolution embodying a principle applicable to any set of Reports to be so established as follows :—

That no case reported by Reporters under such supervision and control should be quoted from any other Report, but this not to interfere with the quotation from any other Report of cases not already so reported.

This resolution was negatived ; the Committee considering that such a restriction, although in the opinion of several of their members very desirable, should not form part of the scheme.

The following is the scheme respectfully submitted and recommended by the Committee for adoption by the Bar :—

SCHEME OF REPORTING RECOMMENDED BY THE COMMITTEE.

Constitution of Council.

1. The Reports recommended by this Committee shall be placed under the general management and control of a Council composed of Members to be appointed as follows : two by Lincoln's Inn ; two by the Middle Temple ; two by the Inner Temple ; one by Gray's Inn ; one by Serjeants' Inn ; and two by the Incorporated Law Society ; and in the event hereinafter mentioned, two more to be appointed by the Lord Chancellor. The Council shall include also the Attorney- and Solicitor-General and the Queen's Advocate for the time being as ex-officio members.

2. One of the members appointed by Lincoln's Inn, the Middle Temple, the Inner Temple, and the Incorporated Law Society respectively, and one of the members (if any) appointed by the Lord Chancellor, shall retire at the end of every two years, and the members appointed by Gray's Inn and Serjeants' Inn respectively shall each retire at the end of four years from his appointment, except that, for the purpose of equalizing the number retiring periodically, the first member appointed by Gray's Inn shall retire at the end of two years. All members retiring shall be eligible for re-appointment.

3. Any occasional vacancy in the Council by death, resignation, or otherwise, may be filled up by a new appointment, and the member so appointed shall retire at the time when the member occasioning the vacancy would in ordinary course have retired.

4. It is desirable that the Council be incorporated by Act of Parliament or Charter. The Council shall have the assistance of a paid secretary, and the Inns of Court shall be requested to guarantee the payment of such secretary's salary, and the office and other expenses

of the Council (not exceeding together £500 per annum), in the proportions following, viz. :—

Lincoln's Inn - Two-sevenths. Middle Temple - Two-sevenths.
Inner Temple - Two-sevenths. Gray's Inn - One-seventh.

Nature of Reports.

5. The Reports shall be prepared by Reporters under the supervision of Editors, and the cases to be reported shall be carefully selected upon the principle of rejecting all cases useless as precedents, and the copyright shall be vested in the Council, or in trustees to be named by them.

6. The Reports shall be divided into three Series, viz. :—

1. Appellate, being the House of Lords and Privy Council cases ;
2. Equity, including Bankruptcy and Lunacy cases ;
3. Common Law, including Probate, Matrimonial, Admiralty, and Ecclesiastical cases ;

with such sub-divisions (if any) of each series as the Council may think desirable.

7. The Common Law and Equity Reports shall be published in monthly parts respectively, and the Appellate Reports as often as shall be found convenient. The November parts shall comprise, as far as practicable, every decision not before reported up to the rising of the Courts for the Long Vacation.

8. The Council shall have power, if they should find it desirable, to establish in connection with the permanent Reports above mentioned a weekly set of Reports.

Staff of Editors and Reporters.

9. The staff of Editors and Reporters and their salaries shall be as follows :—

| | Total. |
|--|--------|
| Two Editors at £600 each | £1,200 |
| Reporters— | |
| 2 House of Lords | |
| 1 Privy Council | |
| 3 Lord Chancellor and Lords Justices (including Bankruptcy and Lunacy) | |
| 2 Queen's Bench (including appeals there— from to Exchequer Chamber) | |
| 8 at £500 each | £4,000 |
| — | |

| | | | | | | | | | | |
|----|--|-----|----|-----|----|----|----|--------------|--------|---------------|
| | | | | | | | | | | Total. |
| 2 | Rolls | | | | | | | | | |
| 2 | Vice-Chancellor Kindersley | | | | | | | | | |
| 2 | Vice-Chancellor Stuart | | | | | | | | | |
| 2 | Vice-Chancellor Wood | | | | | | | | | |
| 2 | Common Pleas (including appeals there- from to Exchequer Chamber) | | | | | | | | | |
| 2 | Exchequer | do. | | do. | | | | | | |
| 12 | .. | .. | .. | .. | .. | .. | .. | at £400 each | £4,800 | |
| 1 | Crown Cases Reserved | .. | .. | .. | .. | .. | .. | | 100 | |
| 1 | Admiralty and Ecclesiastical | .. | .. | .. | .. | .. | .. | | 100 | |
| 2 | Probate and Matrimonial | .. | .. | .. | .. | .. | .. | at £250 each | 500 | |
| | | | | | | | | | | 2) £10,700 |
| | | | | | | | | | | <u>£5,350</u> |
| | First moiety, see Rule 10 | .. | .. | .. | .. | .. | .. | | | |

10. One moiety of these salaries (hereinafter referred to as the "first moiety") shall be paid in all events by equal quarterly payments to the Editors and Reporters, and the other, or "second moiety," at the end of each year out of the profits of that year, so far as the same may be sufficient for the purpose; provided that the salaries or emoluments received by the House of Lords' Reporters from the House shall be brought into account and taken in part payment of the salaries hereinbefore provided for them.

11. The Editors and Reporters shall be Barristers, and shall be appointed and removable by the Council; but the appointment of the Reporters in each Court shall be subject to the approval of the chief or presiding Judge.

12. The existing authorized Reporters shall have the offer of the first appointments in their respective Courts, and in other appointments of Reporters a preference may, if the Council think fit, be given to the Reporters of any publication which may be discontinued in consequence of the issue of the Reports recommended by the Committee.

13. Where there is at present a single authorized Reporter in any Court to which two Reporters are to be appointed under this scheme, the Council may, on his accepting the appointment as one of such Reporters assign to him a proportion greater than one-half, but not exceeding three-fourths, of the aggregate salaries allotted to that Court; and the claim of any authorized Reporter, who is now entitled to a greater share of the emoluments of reporting than a colleague in the same Court, to have an unequal division of the salaries allotted to the same Court, shall in like manner be equitably adjusted by the

Council. Provided that in neither of the cases contemplated by this clause shall a Reporter be entitled to receive in any year more than the average annual amount of his receipts for reporting for the three years next preceding his appointment as a Reporter under this scheme, until his colleague, or all his colleagues if more than one, shall have been put upon an equality with him.

14. Where there are now two authorized Reporters in any Court to which one only is proposed to be appointed under this scheme, and both wish to be continued, the Council may, if it thinks fit, appoint them both, and direct the salary allotted to the Reporter of that Court to be divided between them.

15. Subject to Rule 11, the Editors and Reporters shall be appointed for a term of five years, and they shall be eligible for reappointment; but this limit of time shall not extend to such of the present authorized Reporters as may accept appointments as Reporters under this scheme.

16. The particular duties of the Editors and Reporters shall be prescribed by the Council, who shall have full power to increase or diminish the numbers engaged, vary their duties, and adjust or alter their salaries, regard being had to existing interests for the time being, under Rule 9.

17. No restriction shall be placed upon the right of either Editors or Reporters to practise; but it must be a fundamental requirement that the duties, whether of Editors or Reporters, be faithfully and punctually discharged.

18. The Judges of the several Courts shall be requested to appropriate convenient places to be occupied by the Reporters, to allow the Reporters access to all such papers as they can control and their written judgments, and to revise the reports of their unwritten judgments before publication.

19. The Bar and the solicitors shall be requested to afford the Editors and Reporters all the assistance in their power for the better discharge of their duties, by communicating information and permitting the use of briefs and papers and shorthand-writers' notes.

Financial Arrangements.

20. The Profession shall be invited to subscribe to the Reports, at the following scale of prices, payable in advance, viz. :—

| | Per Annum. |
|----------------------------------|------------|
| For the entire set | £5 5 0 |
| For the Common Law Series . . . | 3 3 0 |
| For the Equity Series | 3 3 0 |
| For the Appellate Series | 2 2 0 |

and for any sub-divisions which the Council may think fit to make, at such prices as the Council shall determine.

21. Such invitations shall contain an announcement that it is considered essential for carrying out the scheme that the aggregate amount of subscriptions, inclusive of any advance from the Consolidated or Suitors' Fund, in respect of the first moiety of the salaries or otherwise, shall reach £10,000 at the least.

22. If such subscriptions, inclusive as aforesaid, shall fall short of £10,000, the subscription list may be cancelled and fresh invitations issued for subscriptions at increased prices, not exceeding double the above scale.

23. The prices to non-subscribers shall be one-third more than those charged to subscribers.

24. The Government shall be supplied with as many copies of the Reports as they may require for public purposes at subscribers' prices.

25. Authority shall, if possible, be obtained for the payment out of the Consolidated or the Suitors' Fund of the first moiety of the salaries of the Editors and Reporters, the same to be repaid out of the price of the copies supplied to the Government, and so far as that may be insufficient out of the proceeds of the sale of the Reports as hereinafter mentioned. In case such authority is obtained the Lord Chancellor shall have the appointment of two additional members of the Council as mentioned in Rule 1.

26. The Council shall have power to make such arrangements as will lead to the discontinuance of any set of existing Reports and for discharging the consideration for the same by payments, during a limited period, out of profits, but not in priority to the payments directed to be made by articles 1, 2, 3 of Rule 29.

27. The Council shall contract with one or more publishers or printers, who shall undertake all the trouble and risk of the publication, sale, and distribution of the reports, receive the subscriptions, pay all expenses, and account to the Council quarterly; such accounts to be examined and audited by the Council with such assistance as they may require.

28. In case payment of the first moiety of the salaries shall not be obtained out of the Consolidated or Suitors' Fund, it shall be made a term of the contract with the publishers or printers that they shall pay such moiety by equal quarterly payments, and be reimbursed the same out of the proceeds of the sale of Reports, as hereinafter mentioned.

29. The proceeds of the sale of Reports and other profits therefrom shall be applied as follows:

1. In defraying the expenses of the publication, sale, and distribu-

tion, including the commission or other remuneration agreed to be given to the publishers or printers, and the first moiety of the salaries, if paid by them :

2. In payment or (if previously paid under the guarantee) in reimbursement to the Inns of Court of the Secretary's salary and other expenses of the Council :
3. In making good to the Consolidated or Suitors' Fund (if paid thereout) so much of the first moiety of the salaries of the Editors and Reporters as shall not be covered by the price of the copies of reports supplied to the Government :
4. In payment of the second moiety of the salaries of the Editors and Reporters ; and of the consideration, if any, agreed to be given for the discontinuance of any existing Reports under Rule 26, in such order and priority as the Council shall have arranged :

Lastly. In augmenting the salaries of the Editors and Reporters, or such of them (if any) as the Council shall consider proper to be augmented, or in constituting a reserve fund to meet future contingencies, or in such other way as the Council in their discretion shall consider best calculated to improve the system of reporting.

30. The Council shall have power, so far as they may not be fettered by any subsisting engagement, to alter the price of the Reports as they think desirable, whether the several objects to which the proceeds of the sales are hereinbefore directed to be applied or any of them have or have not been fulfilled.

31. The accounts shall be audited yearly by an auditor to be appointed by the Editors and Reporters, and, subject to such audit, the Council shall ascertain and settle the amount payable to the Editors and Reporters in respect of their salaries.

32. The Council shall prepare and publish annually a financial statement and report of the results of the working of the system.

14th June, 1864.

R. PAUL AMPHLETT (*Chairman*).
ROBT. PHILLIMORE.
FITZROY KELLY.
W. T. S. DANIEL.
C. JASPER SELWYN.
H. M. CAIRNS.
ALEXR. PULLING.
JAMES DICKINSON.

GEORGE DRUCE.
G. W. HASTINGS.
N. LINDLEY.
J. R. QUAIN,
ALFRED WILLS.
JOHN WESTLAKE.
F. VAUGHAN HAWKINS.

Immediately upon the scheme being signed the Secretaries

communicated with the Attorney-General as to fixing a day for the meeting of the Bar to receive the scheme. As the assizes were about shortly to commence it was considered desirable that the meeting should be held before the Bar left London for the circuit, and with such object the Attorney-General fixed the 1st of July for the meeting, and appointed it to be held in Lincoln's Inn Hall at half-past 4. Due notice was given of the meeting, and copies of the Report and Scheme were distributed by the Secretaries. The meeting was duly held and numerous attended, and the following is a transcript of the shorthand writer's notes of the proceedings:—

LINCOLN'S INN HALL: *Friday, July 1, 1864.*

REPORT OF PROCEEDINGS AT A MEETING OF THE BAR

To take into consideration the Scheme of Reporting recommended by the Committee appointed on the 2nd of December, 1863.

The ATTORNEY-GENERAL (Sir Roundell Palmer) in the Chair.

[Transcript of Mr. TOLCHER'S Shorthand Notes.]

The CHAIRMAN:—Gentlemen, you are all aware of the occasion of our meeting to-day. On the 2nd of December last, a Committee was appointed to consider the question whether any plan could be proposed for the amendment of the present system of preparing, editing, and publishing Law Reports. The Committee which was then nominated, have since very assiduously and diligently endeavoured to discharge that duty which you confided to them; and, whatever opinion anyone may form of the plan they recommend, or any other point connected with the subject, I am sure there will be but one opinion of our obligation to them for the pains and trouble they have bestowed in its consideration. [*Cheers.*] They have now presented a Report, which will be submitted to you at this meeting for your consideration. It is not my intention to say one word on the subject of that Report, or in any way whatever to attempt to influence the judgment of anyone present about it. It will be entirely for you to form your own opinions on that subject. I may, however, take this opportunity of saying that I should myself personally have been glad, especially as I know it has been the wish of some gentlemen interested in the subject, if this meeting could conveniently have been held at a rather more remote period of time, and after a longer opportunity had been afforded to gentlemen to

become acquainted with the nature of the Report made. [*Hear! hear!*] But, taking all things into consideration, there was no option but to hold the meeting now, or (which I think would not have been desirable) to let it stand over for an indefinite time after the Long Vacation. You are all aware that the Circuits are very soon to begin: and, when that happened, we should have been deprived of the presence at this meeting of gentlemen connected with the Common Law Bar, who are in the habit of going the Circuits; and under those circumstances it would have been impossible for any such meeting to have been held. In that state of circumstances, the Committee having made a Report, and having nothing further to do, it seemed right that the Bar should be summoned, and the Report submitted to their consideration; and, I need not say, I believe it will receive from everyone present a fair and candid consideration. [*Hear! hear!*] One word more. It would, of course, be quite possible to extend the debate and discussion on such a subject over large limits of time; but we all know that it is not a possible thing consistently with the hour at which we are compelled, by the circumstances of the Profession, to assemble, and I hope that all gentlemen who may think it right to address the meeting will kindly bear that in mind, that we have but a limited time, and the observations which can be compressed into a moderate compass will lose none of their force and be not the less acceptable on that account. [*Cheers.*] I believe a resolution will be submitted to you, and moved by Mr. Amphlett.

Mr. AMPHLETT:—Mr. Attorney-General and Gentlemen, I have now the honour formally to present for your consideration the Report of the Committee of which the Chairman has spoken; and, as I intend to conclude by a motion for its adoption, I trust I may be allowed to make a few observations (and in doing so I shall attend to the suggestion of the Chairman to be as brief as possible) in order to explain the grounds on which I think the scheme recommended in the Report is worthy of your approval. The Report has been so extensively circulated during the last week among the Profession that it cannot be necessary for me to read it, and I think I shall best consult your convenience, and save much valuable time, by assuming that all present who are interested in the question have made themselves acquainted with its contents.

Gentlemen, it will be in your recollection that there were twenty-two members appointed on the Committee. Of those, you will find fifteen gentlemen's names appended to the Report; the remaining seven, whose names do not appear on the face of the Report, I will just read to you. They are, The Solicitor-General, Mr. Montague Smith, Mr. Denman, Mr. Mellish, Mr. Joshua Williams, Mr. Sweet,

and Mr. Matthews. The Solicitor-General has been prevented, by the pressure of official duties, from attending any of the meetings of the Committee, or taking any part in their proceedings. The remaining six gentlemen have declined, for various reasons, some of which I daresay you will hear from themselves, to sign the Report. I do not think I am improperly forestalling what they will say when I observe that their reasons are not the same; and, with regard to many of them, their objection is rather with regard to what the Report does not contain than what it does contain.

The Committee having been appointed to prepare a scheme for amending the present system of reporting, it may not be unimportant to observe that the appointment of the Committee at the last meeting of the Bar was preceded by another resolution, affirming the expediency of such amendment. It was, therefore, no part of the province of the Committee to re-open the question as to the expediency of amendment. That was decided by the Bar itself; but, if anything were wanted to confirm it, it would be confirmed very strongly by the communications subsequently received by the Committee, which afford abundant evidence that there is a great and wide-spread dissatisfaction with the present system of reporting, not only among the Bar, but among other branches of the Profession. Nor, Gentlemen, was there much difficulty on the part of the Committee in coming to a conclusion as to what the evils were that were complained of. They were palpable, and there appeared to be a very remarkable unanimity as to their character. I think, when I am addressing a meeting of members of the Bar, and most of them practising members of the Bar, it would be superfluous in me to dwell on the evils of which we are all aware. I need only mention the multiplicity of Reports, the number and length of cases reported, and, in many instances, the great delay and irregularity with which the Reports are issued. Still less need I dilate to fellow-sufferers, whom I am addressing, on the great and unnecessary expense which is attendant on the present system. But the evils being admitted, the first question, and a question of considerable difficulty, which the Committee had to consider, and which we are about to consider now, is this, whether those evils are, in their nature, such as can be remedied by any new proposal? Now I believe I am right in saying that the Committee were very generally of opinion (not only those who have signed the Report, but many of those who did not sign the Report) that those evils can be remedied, and that the true remedy is to be found in establishing an improved and well-organised system of authorized Reports. It must be known to you all that the present system of authorized Reports can hardly be considered to have any organisation at all. The Reporters in each Court, without any concert

with the Reporters of other Courts, without any general control or supervision from any quarter, are in the habit of publishing separate reports of their particular Courts. The result of that, as it appears to the Committee, has been a very great and unnecessary expense thrown upon the Profession; and, more than that, when you find so many Reporters are engaged in those authorized Reports without any connection or co-operation between themselves, it must frequently happen that some of those Reporters are in arrear with their cases, so that, if a gentleman is provided with the whole of the authorized Reports, as they are called (I use a term familiar to you all, and you know what I mean), he has still an insufficient supply of the Reports, because some of them may be in arrear; and the result has been that gentlemen in practice have been obliged to have recourse to Reports which are brought out and conducted on a different principle. I believe this imperfection in the authorized Reports has been the prolific parent of many of the objections to the present system of reporting. If you improve the authorized Reports—if you insist on their being brought out promptly and at regular intervals—if you insist on their being connected with each other—if you insist on their being brought out at a moderate expense, I believe that the multiplicity of Reports, which is one of the great evils complained of, will eventually disappear, and that many of the other evils of which we complain will be, if not remedied, at any rate greatly modified.

Well, Gentlemen, that being the view which the Committee very generally took, the next question which they had to consider was, what amended system of the authorized Reports would be the best? Would it be best, as my learned friend Mr. Montague Smith proposes, to have a system of reporting by official Reporters appointed by the Lord Chancellor and paid by the State; or, would it be better to have such a system as is proposed by the Committee, to be under the control and management of the Profession itself? I do not think we have much choice besides those two. There have been other proposals slightly varying in character from them; but I think, from the general feeling of the Committee, and from what I collect of the general feeling of the Profession, the choice of amending the present system of authorized Reports will lie between those two. I confess, if I thought both those schemes were equally practicable, I should not have any strong predilection for one over the other. I think that both would answer the purpose; I think both would relieve us from a great many of the evils of which we complain. No doubt there are many and grave objections to have the Reports under any sort of Governmental control. [*Hear! hear!*] I remember many of those objections were forcibly stated by my friend Mr. Denman on the last occasion, and I am not insensible to their force. On

the other hand, there is what I may call "a charming simplicity" about the financial arrangements, which, fresh as I am from the financial difficulties of the Committee's scheme, is most highly attractive. I have not, however, to make a choice between those two systems, because I am perfectly satisfied there is one fatal objection to Mr. Montague Smith's scheme; and that is, that it is as certain as anything can be certain, that we should never obtain from the Government the necessary funds to support an official system, more particularly if it is to be attended, as Mr. Smith proposes (and which I think would be necessary as an official system), with compensation to existing interests. I am, therefore, afraid that, if this meeting were to pass a resolution in favour of an official system of reporting, the result would be it would become a dead letter, and it would, I fear, operate for a considerable time as a bar to any other amendment of the existing system. Under those circumstances, I should be very glad indeed if that plan of official reporting is not pressed in competition with the plan of the Committee. If it is, I shall feel myself obliged to vote against it.

If, therefore you should be of the opinion which I have ventured to state,—that the proper remedy for existing evils is to have an amended system of authorized Reports, under the control and management of the Profession itself, I really do not see how you could have that principle carried out in any better way than it is proposed to be carried out by this scheme; for what we propose to do is this: we propose that, instead of the present disorganised and irregular system of authorized Reports, they should be, as it were, consolidated together by the Reporters acting under Editors, so that you may have the Reports brought out as a whole, as one, and not subject to all that irregularity which at present exists. And, if you agree with the views of the Committee that this should be under the control and management of the Profession itself, I do not see, inasmuch as the Profession can only act by some organ or other, how you could have a better representative for the Profession than a Council like that which is proposed in this scheme. I remember so well what the Attorney-General has warned us against that I am anxious to say as little as possible upon the subject; and with regard to the details of this scheme, if you agree with the principle of the scheme, I think it would be rather out of place to discuss, at this meeting, the mode in which that Council, for instance, should be composed, or the other details of the scheme. If you agree in principle with what the Committee recommend, I think you must, to a certain extent, take the details on trust. All I can say is that, although I do not think it right, on the present occasion, to discuss at length those details, I can assure you those details have

been most carefully and anxiously considered by the Committee. [*Hear ! hear !*] Another reason why I think it unnecessary to dwell much on the details of the scheme is that you will find ample power is given to the proposed Council to revise and to alter the details of the scheme in such way as convenience may require. For instance, one gentleman may think we propose to appoint too many, another may think we propose to appoint too few, Reporters, and so forth. All that can be remedied by the powers proposed to be vested in the Council. I do not, therefore, propose to travel through the details of the scheme.

There are, however, Gentlemen, two points, and two points only, in the scheme on which I should like to say a few words. Those points are, the proposed salaries of the Editors and Reporters, and the proposed price at which the new Reports will be sold. Now, with regard to the salaries, I do not think the Committee had any point so difficult and so delicate to determine as the amount they should propose for those salaries. Some, perhaps, will think we have proposed too small salaries. What I would say on that is this—if the plan succeeds, provision is made for augmenting the salaries. Others may think we give too much—to those I will say that it has been anxiously considered, and one element of consideration in the amount of the salaries was that we were anxious, if we could, to secure the services of the existing staff of authorized Reporters, and we think, when it comes to be canvassed and examined into, we have proposed such salaries as will induce those gentlemen to come into the scheme, and we feared that, if we put the salaries lower, we should risk that important result. The next thing as to salaries was, that we felt it was due to the Editors and Reporters that they should not be left to the chances of trade with regard to the whole of their salaries ; therefore we came to the conclusion it would be necessary that at least a moiety of those salaries should be paid to them at all events. Here arose, as you will immediately see, a considerable difficulty as to the best way in which a moiety of those salaries should be secured. The Committee were of opinion that, if it could be managed, it would probably be more agreeable to the Reporters, and rather improve the *prestige* of their position, if the Government, out of the Consolidated Fund or the Suitors' Fund, would consent to an advance of that moiety of the salaries ; and when I consider that if this scheme succeeds (and it will not be put into operation unless there is a fair chance of success) there is every probability, almost a certainty, that the Fund which advanced those sums would be repaid, I do not despair of being able to persuade the Government to consent to a moiety of the salaries being so paid. But, Gentlemen, you must observe, and this is very important to bear

in mind, that our success does not depend on the Government assenting to that. If the Government would assent to it, you would agree it is right and proper that the Lord Chancellor should appoint two additional members of the Council; but if the Government will not consent to give us, what I will not call *assistance*, but would rather call *accommodation*, for it will be repaid, we propose that the moiety of the salaries should be secured in this way: that we should have a contract with the publishers who publish these Reports, that, at all events, they should pay one moiety of the salaries. I believe it has been argued that it would be impossible, upon those terms, to find a publisher who would undertake so great a risk as to pay a moiety of the salaries, amounting to £5000 in the first instance; but I think that is entirely a fallacy, because, by the 21st rule of the scheme, we propose that invitations should be issued to the Profession, and that the new system should not be commenced without having an actual subscription list to the extent of £10,000; and I am satisfied, from inquiries which the Committee and myself have made, that, if we go to a publisher with a subscription list from professional men of that large amount, he would have no hesitation whatever in undertaking the responsibility of paying that moiety of the salaries. He will look at it in this way: if you go, before the plan is started, with a subscription list of £10,000, every person acquainted with business will tell you that will represent a much larger sum at the end of the year. £10,000, in point of fact, according to the best calculation we can make, would pay all the expense of the first publication and the first moiety of the salaries. But, more than that, if it succeed the first year, of which I entertain no doubt, you would have the subscription list, at the end of a year or two, more than double. Therefore, although the difficulties in Mr. Montague Smith's financial scheme would not be so great as in ours, yet I think we should be perfectly able to carry it out.

The only other point I shall trouble you upon is the price of the Reports. We have very much considered that question, and you will at once see that the price at which we shall be able to offer the Reports on this new system will depend on the support we obtain from the Profession. If the Profession are sincere, which I have no doubt they are, in their expression of the evils of the present system, and want Reports at a cheap rate, such as we propose by the 20th rule, they must give their support to the scheme, not only by voting for the adoption of the report, but by their subscriptions. If we get, as I have little doubt we shall get, two thousand or more subscribers, I believe we may safely supply these Reports at the amount of five guineas for the whole set. If we are not supported in

that way by the Profession we shall not be able to supply the Reports at so cheap a rate. It appears to me, therefore, that the price of the Reports will chiefly depend on the course which the Profession takes upon the subject. If not only barristers but the other branch of the Profession give the new system the support which I expect they will, then I think there is no doubt the Profession will have really good Reports of Cases decided in the Appellate and all the other Superior Courts, at the rate of five guineas a year. [*Hear ! hear !*] If we find that the wish to have an improved set of Reports is not so great as we expect, it may be necessary to issue invitations for subscriptions at an increased rate. I will not anticipate that. I believe there will be a sufficient number of subscriptions to enable us to furnish Reports at the rates proposed. Everybody will see that that will be a very great boon to the Profession, and I hope to see it successfully carried out. With these observations I will not detain you longer ; but I will move the formal resolution that this Report be adopted. [*Cheers.*]

Mr. EDWARD JAMES :—Mr. Attorney-General and Gentlemen, I have been requested to second the motion for the adoption of this Report. Not having been a member of the Committee I have not had an opportunity of considering in detail the questions that have been brought before them, nor have I had an opportunity of considering very carefully or minutely the details of the scheme now proposed ; but having myself felt for a very considerable period the evils which exist with respect to the present system of reporting, I am perfectly satisfied that that system ought not any longer to continue, and the only question remaining on my mind was, whether there was any scheme whatever likely to be adopted which, to some extent, if not altogether, would cure the defects of the present system. Now, it pleased the Profession at large to entrust the investigation of this matter to a Committee, who have had ample opportunities of consulting among themselves and of making inquiries, to which reference is made in their Report, touching the mode in which Reports were carried out in other countries ; and I feel bound to give them credit for all they have done, and think they have deserved the thanks of the Profession, as has been stated by the learned Attorney-General. [*Hear ! hear !*] In seconding the adoption of their Report I do not consider myself bound to state that I entirely approve of every portion of it. I think we shall be fully justified (at all events, all those who consider the present mode of reporting defective will be fully justified) in giving a fair trial to that scheme which, after great deliberation, has been laid before us and has been submitted to your notice. If it answers, we shall all derive benefit from it. If it does not answer in its totality, it may be subject to such alterations as may

from time to time be advised, and which may, in the opinion of those gentlemen to whom the alterations will be entrusted, be for the benefit of the Profession. It is for these reasons that I am inclined to recommend to the meeting the adoption of this Report in its entirety. It strikes me that, with respect to the financial portion of the scheme, great difficulty may be encountered, but I have not had an opportunity of considering that matter so fully as I should have liked to have done. However, it strikes me that there is one matter which constitutes a desirable improvement on the present system, that is, securing the control of Editors over the Reporters. That is a very desirable thing indeed, and it ought to be conducted by men of the greatest eminence in the Profession, who would be inclined to give their services, which will undoubtedly be very onerous, and to secure that we ought to give very large salaries. It occurred to me that the amount specified here would be inadequate to the securing of such services; but that is a matter of detail, and I observe that by one of the provisions in the scheme there is power given to the Council to vary the duties of both Editors and Reporters and to alter their salaries. That may be either to increase or to diminish them. You will pardon me if I fulfil the requirement of the Attorney-General by not making a long speech. In the first place, I am not inclined to do so, and in the next place, if I were so inclined, I am entirely unable, and therefore I shall at once conclude by seconding the resolution that this Report be adopted.

The CHAIRMAN then put the question to the meeting that the Report of the Committee be adopted.

Mr. W. M. BEST:—Mr. Attorney-General, Perhaps I may be allowed to say a word or two upon the scheme which has been proposed, being a Reporter myself. I do not wish to speak of the scheme generally. There is only one point in it that I look upon as a matter of principle, and not of detail, and from which I am prepared to dissent, and should wish to have the opinion of the meeting upon; I mean that portion which relates to the appointment of Editors. I look on that as a question of principle, and it is a matter upon which I require to have the judgment of the meeting. I doubt whether the Committee have given to this matter all the consideration it deserves. I doubt, among other things, if they have taken the pains to inquire what is the practice of the Reporters, and whether there is any course pursued at all analogous to the system of editing. Perhaps the meeting will allow me to observe, that the practice with regard to the Reports with which I am connected, the Queen's Bench Reports, is this, which was not a system invented by myself or my colleagues, but which we have taken and followed as we found it, which was formerly pursued by *Adolphus*

and *Ellis*, *Ellis* and *Blackburn*, and *Ellis* and *Ellis*—it is a system of *mutual supervision*. A Reporter takes a note of the case, prepares his report, sends it to the press, and then he sends a proof to his colleague, who revises it, and looks at it as closely as anything can be looked at. He first of all verifies the authorities, so that there is a double verification of the authorities in that report. This he sends to his colleague, having marked in pencil any suggestions or observations which he thinks desirable to make; but these are not obligatory on his colleague, they are only matter of friendly advice, and his colleague, in his turn, performs the same for him. The report is under the undivided responsibility of the person who made it, the other having no control over it. This is the practice with regard to that series of regular Reports with which I am connected. What is done with regard to the others I cannot say, for I do not know. For some regular Reports there is only one Reporter, and therefore, of course, the system to which I have alluded is impossible with regard to those; but whether, when there are two Reporters, that system is followed or not I am unable to say. Perhaps some of the Committee, or some gentleman present, can give us information about it. Now it is proposed to do away with the present system, and to place the Reporter under a person hitherto unknown in reporting, that is to say, an Editor. No such person was found necessary for the reports of *Durnford* and *East*, or *Barnewall* and *Alderson*, or *Barnewall* and *Cresswell*, or *Adolphus* and *Ellis*. [A voice: "The Law Journal."] It is so with "The Law Journal" I am quite aware. An Editor is necessary for "The Law Journal," and it is right there should be an Editor where a number of reports are collected together; and it must be remembered, also, that "The Law Journal" contains not only reports but a series of statutes; it is a work which appears monthly, and for many reasons, too numerous to state, it is quite proper to have an Editor for "The Law Journal." An Editor is also indispensable to a newspaper; but I do not admit the analogy between a newspaper and a regular system of Reports. The Committee do not define the duties of the proposed Editors. If I remember right, their Report states, that the duties of the Editors and Reporters are to be determined by the Council. I think this meeting ought to consider and determine that matter. If what is intended is that the Editor is to verify all the authorities and to see there are no mistakes of that sort, and to exercise the functions of reader of the press, no one could make any objection, further than it would not be necessary to pay a gentleman £600 a year to do what an intelligent clerk could do quite as well. Is it the intention of the Committee that the Editor is to have a controlling power over the Reports? After a report is sent in to the Editor, is the Editor to say,

acting either at his own suggestion, or under the influence of others, "Oh, that case ought not to be reported, I put my veto on it," or, what is far worse, is he to have the power of rejecting a sentence which he does not like, or to strike out a word that he does not consider elegant? One great evil would follow, which is, that the independence of the Reporter would be destroyed; and another, that there would be a divided responsibility. If the report is wrong, if the report is open to any objections, if it is inaccurate, if it is incomplete, or if it does not appear in time, who is to be responsible? The Reporter will say "I am not; there is an Editor over me, I sent the report in such a form, and the Editor struck it out." If the Editor is attacked, he will say, "It is not my report, my name is not to it; I am only the supervisor." For these reasons I venture to suggest to the meeting that they ought to consider this matter, and we ought to have a distinct statement by the Committee what duties the Editor is to perform. If he is to perform the duties I have mentioned, I would take the sense of the meeting, and vote against it. If it is the first I mentioned, it is unobjectionable except on the ground of expense. Before I conclude, I desire to bear my humble testimony to the labours of the Committee, but I have thought it right to bring this before you, and I will not trespass on your time any longer. I ought to conclude, in point of form, by moving that all those clauses of the Report which relate to the system of editorship be expunged.

The CHAIRMAN:—If I may take the liberty of suggesting the form in which that amendment should be put, I would suggest that Mr. Best should move, that there be added at the end of the resolution, "with the exception of that part which relates to the superintendence of Editors."

Mr. BEST:—I would rather move it, Sir, as has been suggested to me, in this form:—Rule 5 provides, "The Reports shall be prepared by Reporters under the supervision of Editors." I beg to move the omission of the words "under the supervision of Editors," it being understood that if those words should be omitted the corresponding alterations throughout will be made.

The CHAIRMAN:—Yes, that will answer the purpose.

Mr. A. E. MILLER:—Mr. Attorney-General and Gentlemen, I have great pleasure in seconding the amendment. I will promise the meeting not to detain them longer than till the hands of the clock reach the hour of five (it being now five minutes to five). I have very few words to say, because the Profession will judge for themselves of this scheme so far as it relates to the Profession generally, and I will confine my few observations to my views of it so far as it relates to that particular body which my friend Mr. Amphlett has called "the

authorized Reporters." It appears to me that this proposal, in its present form, simply amounts to this:—the Committee kindly ask us to acquiesce in a scheme which is to deprive us entirely of all control over our own Reports—to sacrifice that independence which, after all, is the only advantage we have over anyone else—to subject us to some supervision or other, we don't know what—to be managed by, we don't know whom—and in return, to pay us, or rather to offer us somebody's guarantee, for something less than what we now get. [*Hear! hear! and laughter.*] I sincerely hope that, whatever else the Profession may do, they will stamp, by their vote on this question of Editors, their opinion of another portion of the same scheme; for it appears to me that this idea of placing Editors over the Reporters is exactly on the footing of another notion propounded in this scheme of placing a Council over the Reporters. [*Hear! hear!*] I confess it is entirely beyond my conception why any set of gentlemen should propose that an arbitrary and irresponsible Council, who do not contribute one sixpence towards the expense of the Reports, and who do not represent any person who does contribute one sixpence towards that expense, should have complete control over the management of the Reports, the salaries of the Reporters, the amounts at which the Reports are to be issued to the public, and every other detail of the scheme. If the Council were to be elected by the subscribers, unworkable as I believe such a plan would be, it would at least be theoretically defensible; but why the Benchers of the several Inns, who carefully avoid being responsible for one halfpenny in case of failure of the Reports, or in case the scheme should fail—as in my judgment it will fail after the first year or so, after the persons at present in possession have been cajoled out of their places—why they, without having any responsibility, should have all the control, I do not know. I am very happy in seconding my friend's amendment; and if he had carried it to the exclusion of everything relating to the Council as well, I should gladly have seconded that also.

Mr. WORDSWORTH:—Mr. Attorney-General, before that amendment is put, I wish to move an adjournment. It seems to me that the matter under consideration is one of very great interest and very great importance. It must be admitted that the Report of the Committee has been placed in the hands of the members of the Bar, and other persons interested in the discussion of the question, only within a very short time, so that it is impossible that due consideration can have been given to it. There are many persons who have not had an opportunity of considering the scheme at all, and I think that the scheme displayed in the Report of the Committee, without taking any formal objection to it, may be deemed to be one of a complicated nature, and it certainly must be

taken to affect, very seriously, a variety of vested rights. What I have, therefore, to submit to the gentlemen present is—are you in a condition at the present moment to come to a decision on the question? Have you had sufficient time, or has proper opportunity been afforded to other persons, to consider the great change which is proposed to be effected by the scheme submitted by the Committee? I submit that sufficient time has not been afforded. I shall, therefore, move that the further consideration of this subject be postponed until some day in the month of November next; and, in making that proposition, I may perhaps be permitted to throw out the suggestion, that the objects contemplated might possibly be effected in a much simpler form; and therefore it is necessary that some adjournment should take place in order to consider whether a simpler and better plan might not be adopted. If an Act of Parliament were passed authorizing the Lords of the Treasury to give compensation to vested interests, upon those interests being ascertained by the Judges of the respective Courts, and sufficient provision were made for existing interests, it would then remain a simple matter for the Judges of each Court to nominate a fit and proper person to be a Reporter of each Court.

Mr. MALINS:—Mr. Attorney-General and Gentlemen, I rise to second the proposal of my friend Mr. Wordsworth. I am inclined to give the greatest possible confidence to the Committee. We could not perhaps have selected a more able Committee, or one entitled to higher consideration; but, in order that we may sanction this very important proposal, I quite agree, and I think the meeting will quite agree with Mr. Wordsworth, that it is necessary it should receive very deliberate consideration. This Report has been presented to us at a season of the year when we are under such pressure that it is impossible to give attention to the matter. [*Laughter.*] Some are engaged in one way and some in another; it is not necessary for me to say how, but I can only say for myself—[*Cries of "Oh! oh!" and cheers*—I am sure gentlemen will not suppose that I am speaking of any political matters. [*Laughter and cheers.*] But this Report was sent to me in the course of this week: certainly I never saw it until after Monday. I confess I have not been able to do more than glance my eye through it. I have not been able to give it consideration, and I strongly suspect that there are many other gentlemen in the same situation. Although I am quite aware, with reference to what my friend Mr. Wordsworth has said, that it is not practicable to give compensation, yet I cannot disguise from myself that this Report deals with a number of vested interests, and those vested interests are not to be lightly regarded—[*Hear! hear!*—and

before we abolish an existing system, however great our confidence may be in the Committee, it is the duty of those who compose this great meeting to consider that we thoroughly understand what is proposed to be done. It is proposed, as I understand, to abolish the existing system of reporting altogether. We agreed on the former occasion that there were very great evils in the existing system; it has imperfections; it is committed to the hands of gentlemen who have other duties to perform. We cannot blame gentlemen, considering the slight remuneration which reporting affords, for making other engagements. They cannot sacrifice their professional income. It is now proposed that those who undertake the duties of reporting shall have a salary which will make it worth their while to sacrifice their professional income. [*Cries of "No! no!"*] They must make that sacrifice to a certain extent, undoubtedly. [*Hear! hear!*] I find one proposal which certainly involves it, namely, that those who undertake reporting shall make it their duty to attend the Court. Now, if any gentleman in this meeting will tell me that if those who undertake reporting are obliged (whatever their professional calls may be) to be in Court during the whole of the sitting—[*A voice*: "There are to be two!"]—whether there are to be two or two hundred I do not care—if that does not involve at certain times the sacrifice of professional income, all I can say is, that my experience in the Profession is thrown away, because my experience has been that there is no engagement which absolutely takes you away from your practice which will not interfere with your professional pursuits in such a manner that no man can calculate what effect it may have on his after life. Therefore, before I concur in a scheme proposing to effect so great a change—affecting vested interests to so great an extent, and affecting personal practice so much, I should require time to give it further consideration. What can be the evil of a slight postponement? We are now in July. What can be done between this and November? There is a period of leisure coming, when even the Attorney-General who presides over us may be able to give his attention to it. [*Cheers and laughter.*] Probably my friend the Attorney-General may have more leisure than he desires. [*Renewed laughter*] But, however this may be, it is only a proposal to postpone the consideration of the Report until the cool days of November; and if we take the Report into consideration, and then in November meet again to deliberate upon it, considering that what we then do will be within a year from the time of the appointment of the Committee, I do not think the Profession at large, however ardently we may require an improvement in the system of reporting, can say that there has been an undue delay; whereas undue haste may lead to steps that we may afterwards

greatly regret. I am not capable now of exercising a judgment upon the subject, and therefore before I express an opinion upon whether this Report should or should not be adopted, I certainly require further time for consideration. [*Hear ! hear !*]

SIR HUGH CAIRNS :—Mr. Attorney-General, I only rise for the purpose of saying that I own it seems to me, if there be anybody attending this meeting who says there has not been ample and sufficient opportunity of considering this Report, and who wishes for adjournment, it seems to me almost a matter of course that that adjournment should take place. [*Hear ! hear !*] This is a matter of very great importance. We had very great discussions and very great difficulty as to what should be the proper view to take of the whole matter when the Committee was appointed. It is not to be supposed that a Committee which has held a great number of meetings, and which I can say, from my own experience, has had the greatest difficulty in arriving at the conclusion at which they did arrive—it is not to be supposed, I say, that a subject which has occupied the attention of the Committee can be disposed of on a few moments' consideration, such as we can give it here, and after the Report has only been in the hands of the Profession a few days. If I desired any support for the argument, my learned friend, Mr. Malins, has given it, for he has certainly shewn that he has not been able to read or to do justice to the Report. [*Hear ! hear ! and laughter.*]

MR. MALINS :—I admit it.

SIR HUGH CAIRNS :—And I have no doubt that he and others, if further time is afforded them, will derive great advantage from the perusal of it. Nothing can be done before the winter, and I think it is only a proper demand, that the time which will intervene between this and November should be given to the Profession to consider the Report. I hope, therefore, that you will adopt that which is certainly the desire of a certain portion of the meeting. [*Hear ! hear !*]

MR. ELDETON :—If this meeting be adjourned, time would be saved if those gentlemen who have suggestions to make would hand in their suggestions, so that they might be considered at the next meeting with the Report.

MR. MANISTY :—I would make this suggestion, that those who are prepared by November to accept the invitation to pay five guineas annually, should send in a note to that effect. [*Loud cries of "Hear ! hear !"*] By that means the sense of the Profession would be ascertained by the time we next meet.

THE CHAIRMAN :—It has been moved and seconded, that the further consideration of this subject be postponed until a day to be hereafter

fixed by—I suppose I ought to say, the Attorney-General for the time being—[*Loud cheers and laughter*—in the month of November next.

Carried unanimously.

The CHAIRMAN :—The meeting stands adjourned.

Adjourned at a quarter-past five o'clock.

It is proper now to state that a meeting of the Committee was held on the 28th of June, after the Report to be presented had been agreed to, for the purpose of making provision for defraying the expenses of the Committee. Although the services of the Honorary Secretaries were given gratuitously, some expenses had been necessarily incurred in printing, distributing circulars, postage-stamps, and other petty expenses. The accounts of these expenses were got in by the Secretaries, and afterwards carefully examined and checked by the Chairman with the necessary vouchers, and it was found that a subscription of three guineas from each member of the Committee would be sufficient to defray all expenses. This subscription would amount to £69 6s. A proposal for payment of that subscription was made and willingly acceded to by every member of the Committee, so that, in fact, at the meeting on the 1st of July all the expenses of the Committee had been met and paid by the voluntary contributions of its members. Of course no mention or even allusion to this fact was mentioned in the Report, or in Mr. Amphlett's address to the meeting; but in a history of the origin of the Law Reports this fact properly finds a place.

A few days after the Bar meeting, Mr. Joshua Williams published and distributed among the Profession his reasons for not signing the Report, of which the following is a copy :—

MR. JOSHUA WILLIAMS'S PAPER.

I THINK it is due to the Bar that I should state my reasons for not concurring in the Report of the Committee on Law Reporting, of which I was nominated a member. The joint proposal of Mr. Serjeant Pulling, Mr. Westlake and myself, mentioned in the Report, does not in every particular represent my views. I agreed to some alterations for the purpose of securing the co-operation of those gentlemen.

It appears to me that the essence of all that is practicable by way

of amendment of the present system of Law Reporting is comprised in the three following propositions:—

1. That all judgments of the Superior Courts should, as far as practicable, be written.
2. That all judgments of the Superior Courts, not committed to writing before delivery, should be committed to writing under the authority of the Court as soon as possible after delivery.
3. That access to all the judgments of the Superior Courts should be afforded to every member of the Profession as speedily and cheaply as possible.

I moved resolutions to this effect before the Committee, but the first being negatived, I withdrew the others.

The judgments of the Courts make the Law. This alone is a sufficient reason why their preservation should not be left, as at present, to the care of any Reporter who may chance to be present.

Accuracy is evidently the first requisite. To secure this the best means should be adopted. Writing evidently secures accuracy better than speaking. But if a judgment must needs be spoken, a report of it, made by a practised shorthand writer, and perused and signed by the Judge, appears to me to be the next best means of securing accuracy.

Speedy and cheap access to the judgments when once they are accurately recorded is evidently best obtained by their being printed as soon as possible, and published at the lowest price that will cover the expense of their publication.

Reporting as now used is a complex operation. It comprises an accurate statement of the judgment so far as the Reporter's means and opportunities may allow; but it includes also selecting, digesting, and abstracting, so as to present in a readable form the decisions of such cases as the Reporter thinks worthy of publication.

The great mass of materials is an evil that can never be overcome. No one can prevent two persons from going to law about any matter whatever; and, if they do, a decision more or less valuable must be the result.

I think that the present Reporters exercise functions which ought to be separated. So far as they aim merely at an accurate report of the judgment, their functions appear to me to be such as would be more properly discharged by an official person. So far as they select, digest, and abstract, so far, I think, should their duties be open to competition. The records which form the sources of history are all officially preserved; but history itself is written by individuals, whose success is proportioned to the ability they display in selecting and digesting.

The Scheme recommended by the Committee proposes to unite

functions which, I think, should be kept separate. The proposed incorporation of a new body by Letters Patent or Act of Parliament appears to me to involve a constitutional change far too important for the evils complained of. But my main objection is, that it does not strike at the root of the evil, which lies in the want of an accurate official record of every judgment pronounced by the Courts.

JOSHUA WILLIAMS.

3, STONE BUILDINGS, LINCOLN'S INN,
July 6, 1864.

The interval between the 1st of July and the day in November to be thereafter named by the Attorney-General for the further meeting of the Bar, afforded an opportunity to those who were opposed to the Bar Scheme, of which they took advantage, to depreciate it, as I thought unfairly, in the eyes of the public and the Profession. "The Law Times" went so far as to impugn the motives of the Committee, and even to suggest that the whole scheme was a clumsy and ill-concealed snare laid by a single individual with a view to his own personal benefit and advantage. An anonymous writer in "The Saturday Review" did not hesitate to indulge in acrimonious remarks which exceeded the bounds of fair and legitimate criticism. The *suppressio veri* and the *suggestio falsi* may be regarded as legitimate modes of attack in matters of public concern where private interests are thought to be in danger, but I felt that in this case they were unfairly and unjustly resorted to, and, having regard to the professional sources from which they sprang (certainly in the case of "The Law Times," and possibly also in the case of "The Saturday Review") they were attacks against which the high professional character of the members of the Committee—laying myself on one side—should have been a sufficient protection; and especially against attack from any member of the same Profession. The nice sense of honour which *was* the characteristic of the Bar in its dealings with its brethren is, I trust, still a living principle, and has not waned before the waxing influence of any temptation which would tend to lower the character of the Bar. Influenced by the sense of injustice and dishonour they had done to the Committee, and the attempt to depreciate their labours in order to advance the selfish interest of their detractor, I obtained the consent of the Attorney-General to address a further letter to

him on the subject; and accordingly, in anticipation of the meeting in November, I prepared and printed, and on the 29th of October, 1864, published, a letter of which the following is a copy:—

LAW REPORTING.

A LETTER TO SIR ROUNDELL PALMER, KNT., M.P., HER MAJESTY'S ATTORNEY-GENERAL, *having particular reference to THE SCHEME OF LAW REPORTING RECOMMENDED BY THE COMMITTEE APPOINTED AT THE MEETING OF THE BAR held December 2, 1863, by W. T. S. DANIEL, Q.C.*

TO SIR ROUNDELL PALMER, KNT., M.P.

Her Majesty's Attorney-General.

SIR,

I avail myself of your permission to address to you, and through you to the Profession at large, a further letter upon the subject of Law Reporting. This subject, since it has been stirred, has, though eliciting various differences of opinion, been entertained by the Bar with so much earnestness, and the several periodical publications connected with the Law—"The Law Magazine," "The Jurist," "The Law Times," "The Solicitors' Journal," and recently "The Saturday Review"—have, by leading articles and correspondence, real or imaginary, succeeded in keeping the subject so constantly before the Profession, that the interest felt in its discussion may be regarded as somewhat commensurate to its importance. Ever since the 12th of June, 1863, when the Lord Chancellor, in his speech "on the Revision of the Law," exposed the glaring evils of the present system in a manner and to an extent which admitted neither of denial nor qualification, the conviction that amendment is desirable and necessary has, I believe, been spreading and deepening in the mind of the Profession and the public, so that the question of amendment has ceased to be merely matter for discussion among amateur Law Reformers; it has taken its place among those grave public questions which call for solution by the firm application of an efficient remedy. Such are the admitted difficulties, however, which beset the question, that the remedy can hardly be expected to be found by any who would enter upon the labour of its discovery in the spirit either of dogmatism or self-interest. The evils to be remedied must not only be carefully ascertained and defined, but their causes and origin must be dispassionately and fearlessly investigated and traced, the public interest,

as the prime object, being always kept steadily in view. This done, there may be some hope that an efficient remedy may be found.

The Bar as a body, owing a duty to the public, to prevent a privilege, claimed to belong to itself as an institution, from being exercised by its members in a manner detrimental to the public interest, was appealed to to devise a remedy. That appeal was answered by the meeting held under your auspices on the 2nd of December, 1863, in pursuance of a requisition signed by upwards of 380 members of the Bar. At that meeting, with but faint resistance, a resolution was passed expressing the opinion of the Bar "that the present system of preparing, editing, and publishing reports of judicial decisions in this country requires amendment." That resolution was followed by the appointment of a Committee to prepare a plan for the amendment of the present system and report thereon to a future meeting (1). The Committee so appointed undertook the duty involved in the resolution, and, after six months of careful investigation and inquiry, fifteen of the twenty-two members concurred in making their report, and appended to it a plan of amendment in the form of a scheme which they recommended for adoption (2). On the 1st of July, 1864, a second meeting of the Bar was held under your auspices to consider the Report and Scheme. By unanimous resolution this meeting was adjourned to such day in November next as the Attorney-General for the time being should appoint for the further and fuller consideration of the matter. The appointment of a time and place for holding the further meeting awaits your fiat.

At page 157, will be found a copy of shorthand notes of the proceedings of the meeting on the 1st of July. A perusal of these will remind you of what transpired at the meeting, and what led to its adjournment. And it was to me matter of surprise that any publications, affecting to furnish correct information to the public, should have fallen into the mistake of representing, much less of repeating with zealous perseverance, that the proceedings of the Committee had proved a *fiasco*, and that the Profession would be troubled no more with the Report or Scheme. Notwithstanding this weak invention of the enemy, I presume, Sir, the meeting will be held; and that the question of adopting the plan as recommended, with or without modification, or rejecting it *in toto*, will be considered and decided; and I cannot bring myself to doubt for a moment but that the proceedings of the meeting will be conducted and concluded in a manner becoming the importance of the subject and the character of the Bar.

My object in writing the present letter, and submitting the following observations for the consideration of my professional brethren, is, to promote and assist the full and fair discussion of the Scheme recom-

(1) See p. 80.

(2) See p. 151.

mended by the Committee; being satisfied that, whatever may be the decision of the meeting thus shortly to be held, the time and labour that have been bestowed upon the matter will not have been thrown away, but that a positive good will be achieved by a knowledge of the fact that the Bar as a body are willing, or decline, to co-operate in the redress of the existing evils, and to exert for that object such influence and authority as they, as an institution, possess.

As I write solely on my own authority, and am not in any manner directly or indirectly authorized to represent the opinions or views of any other member of the Committee; and further, as the responsibility of naming the Committee at the meeting of the 2nd of December, 1868, under the circumstances then existing, chiefly devolved upon me, it may not be amiss that I should say a few words as to the composition of the Committee, and the relation of its members towards the Profession of which it thus became in a sense the representative.

The number of the Committee as originally proposed, exclusive of the Hon. George Denman, was twenty-one, and consisted, as a reference to the names will shew, of nine members of the Inner Bar, and twelve members of the Outer Bar. Of the nine members of the Inner Bar, five, including the Queen's Advocate, represented the Common Law Bar, and four the Equity Bar. Of the twelve members of the Outer Bar, two represented the Conveyancers, five the Common Law Bar, and five the Equity Bar. Mr. Denman was added to the Committee at the meeting, thus increasing the entire number to twenty-two, and those of the Inner Bar to ten; and of those ten making the proportions of the Common Law Bar and Equity Bar respectively six and four.

It will thus be seen that an attempt was made to secure, as far as numbers went, what I hope will be thought to have been a fair proportion between the several divisions of the Bar as they exist in practice—Conveyancing, Common Law, and Equity. And as to the members selected, the attempt was also made to make such a selection that, as regarded professional position, individual independence, and personal honour, each should be *omni exceptione major*. And notwithstanding some discourteous attempts to depreciate the character and impugn the motives of the Committee, in which anonymous journalism has condescended to indulge, I believe that, whether the result of the labours of the Committee be accepted or not, no honourable member of the Bar will permit himself to doubt that those labours have been undertaken, and the result proposed, with singleness of purpose, directed solely to the public object for the furtherance of which the Committee were appointed.

In these observations, of course I speak only of my colleagues, and

to them perhaps an apology is due for noticing what they would think not worth notice. My apology must, however, be found in the fact that the poison of a false insinuation spreads in unseen and unknown directions; and even a contributor to "The Saturday Review" has spoken of the fear "that an agitation set on foot for the improvement of the Law might degenerate into a mere speculation for the benefit of Lawyers"—as inducing members of the Bar to stand aloof from a movement which, on its own merits, they might be disposed to support.

The steps which the Committee took to arm themselves with the means of properly discharging the duty they had undertaken, are detailed in the Report. In answer to their circular inviting observations and suggestions, the Committee received communications from seventy-four members of the Profession, including Lord St. Leonards, the Right Hon. Joseph Napier, V.-C. Wood, and Mr. Justice Willes. In addition they also received communications from four Societies of Attorneys and Solicitors—the Law Institution, and the Associations at Leeds, Worcester, and Birmingham. The Committee were desirous of obtaining statistical information from publishers and proprietors of existing Reports, but prudential reasons appeared, and not unnaturally, to oppose obstacles in the way of any such information being furnished by parties interested. The Committee were nevertheless in possession of sufficient data to enable them to discharge their duty.

The communications they received appeared to shew as a result that professional opinions were divided substantially into three classes:—

1. Those who considered that the present system of Law Reporting was so far satisfactory that it was inexpedient to interfere with it at all; or, if interfered with, that the interference should be effected by authority of the Legislature and Government, and be accompanied by proper compensation to existing interests.

2. Those who disapproved of the existing system, and insisted that interference was necessary, but that it should be effected by authority and accompanied by compensation.

3. Those who disapproved of the existing system, and desired to establish in lieu of it a system founded upon professional co-operation, and to be under professional control, without any direct interference by the Government.

The first class was further sub-divided into those who admitted interference as an alternative, if undertaken by authority and accompanied by compensation; and those who considered the present system to be on the whole so good as not to admit of any interference whatever, without introducing, as the result of such interference, greater evils than any that could be redressed.

The second class also included some who not only considered that the present system should be changed by authority, but that the change should extend to the remodelling of our system of reporting altogether by requiring that the motives—the grounds and reasons—of judicial decisions, should be recorded by Registrars assisted by short-hand writers, both acting under the authority of the deciding Judge; so that, in effect, no other report than the record would be required as evidence of the Law, and, as a consequence, that the record should be both exclusive and conclusive—adopting, in short, the French system as the model.

With respect to the sub-division of the first class before alluded to, namely, those who maintained that nothing should be done to interfere with the present system, they had in Mr. Denman a most able and zealous representative of their views, but no other member of the Committee expressed concurrence in those views. The necessity for amendment was admitted, and the only question was, what that amendment should be.

I think, however, that as the opinion that nothing should be done is entertained by those to whom great respect is due, and as this view appears to be favoured by the very compact body of opponents who represent "vested interests," it is right to consider upon what grounds it is attempted to be maintained that things should be left as they are. The prime argument, as I understand it, in favour of doing nothing is, that the present system rests on the principles of Free Trade; that the result has been, and is, unlimited competition; and that any evils which may result from competition will be cured by competition if left free. It is alleged, and truly, that before the establishment of the present system the Reports had become a mischievous monopoly, fostered by judicial influence. The result of free competition has been, it is said, and truly, to destroy that monopoly, and put an end to all undue judicial influence, if it ever existed; and thus no case which the interests of the public require to be reported can, except by the strangest mischance, escape the attention of the numerous Reporters that now attend each Court, and supply materials for the six existing sets of Reports. The Profession are thus, it is said, sure of having everything of value in the shape of decision brought before them; and the Judges cannot refuse to permit the citation of any case, the report of which is accredited by a barrister; and, although the prestige of authorized Reports may be attempted to be kept up, and, when a case is cited from any other publication, a Judge may ask whether the case is not reported,—in whatever the *soi-disant* authorized Report in the particular Court may happen to be, and prefer that report, if forthcoming, yet the public have the security, resulting from free reporting, that the judicial mind is kept in check,

and prevented from erring either through partiality for, or dislike of, any particular Report or Reporter. These advantages being undeniable are claimed as the results of unlimited competition. And it is insisted that they are not equally attainable by any other means. And then it is asked what are the evils complained of as resulting from this system? That there are six sets of Reports, whereas one, or at most two, are all that the Profession require; that to take all the Reports costs a large sum of money, and this is a burden to practitioners. The objectors, answering their own objections, reply: Be it as you say—this burden falls only on practitioners in large practice; they are few in number and can afford to pay; cost, therefore, is no grievance either to the public or the Profession generally; and as to the number of Reports, that is no evil worth talking about, because no man need take more Reports than he requires, or even any Reports at all unless he likes. Whereas, on the other hand, say those who deprecate interference, any change which proposes a restriction, no matter in what form, upon the perfect freedom of reporting, is a departure from a principle, the soundness of which none but simpletons or bigots will at this day dare openly to question. The principle once departed from the *facilis descensus* is commenced, and there will be no stopping till the bottom is reached, and "monopoly," in all its hideous deformity, re-established, and Judges again become despotic. Interfere with the present system, say those whom the system suits, you interfere with Free Trade. Free Trade has destroyed monopoly; interfere with Free Trade you restore monopoly. And thus, with them, all argument is out of place and inquiry useless!

"*Quia non movere*" is a maxim which does very well for those who are in possession of what contents them; but the sentiment involved is not palatable to those who feel a grievance and desire to find relief. Is it quite clear that reporting judicial decisions for citation as authority, is a proper subject to which to apply the principles of Free Trade? This is a question which must be satisfactorily answered in the affirmative by those who resist all change. In my former letter I endeavoured to point out that a system of Law Reporting, *intended for citation as authority*, was not properly the subject of Free Trade, and stated the reasons for that conclusion; I am not aware that those reasons have ever been shewn to be fallacious. I will shortly restate them: Free Trade is properly applicable to that which can be the subject of legitimate commerce; that is, to some subject in which full play can be given to the unrestricted employment of skill, labour, and capital, and that these should be capable of application to the raw material, the manufactured article, and the demand. Now, is Law Reporting such a subject? Is not Law Reporting, in our system of jurisprudence, an essential part of law-making—and is not law-making

especially a matter of public concern? The raw material is beyond the reach of commerce; it consists of matters of litigation which arise in Courts of Justice, and can neither be increased nor modified, nor in any manner affected, either in quantity, quality, or cost, by any commercial agency. The manufactured article is the product of the labour of a *privileged* class, whose services must be resorted to—a state of things directly opposed to Free Trade. And lastly, the demand is created by the necessities of the public for a knowledge of the Law, and these exist independently of all commercial agency. Thus, experience shews that, in the matter of Law Reports, the fundamental rule of political economy which underlies all Free Trade, that demand will regulate supply, is reversed and turned upside down, for here the supply creates and necessitates the demand. Under the present system, if Reports are published—no matter how indifferent in quality or how excessive in quantity or number—as they may be cited as authority, practitioners must have recourse to them. Thus, an illegitimate supply creates an illegitimate demand. Experience has further proved that, by applying competition resulting from Free Trade as the remedy for redressing the evils of the old monopoly, those evils are not redressed—the authorized Reports still live on, still dilatory, and irregular, and as costly as ever. In addition, the remedy has, in its application, introduced evils of its own as great as those it affected to remove. Those who resist all change in the present system endeavour greatly to underrate the evils introduced by competition. Their endeavour is to represent those evils as amounting to no more than a personal burden or tax upon the individual practitioner—increasing his trouble in searching for the Law, and swelling the amount of his bookseller's bill. That is, however, a very superficial and partial view of the matter—the evil reaches much further and deeper; it reaches from the advocate to the practitioner—from the practitioner to the client, and the client is, in this matter, the public. It affects the substance of the Law, and the public interest in its administration. A writer in "The Saturday Review," though not approving the scheme recommended by the Committee, thus describes the evils of the present system:—

The real grievance is the monstrous redundancy of the Reports. Not only is every case printed again and again in rival publications, at an expense which of course falls upon the consumer of these curious products, but every decision worthy of preservation as a landmark of the Law is overwhelmed and buried in a mass of reports, so voluminous as to baffle the keenest industry, and for the most part so worthless as to serve no conceivable purpose, except to embarrass the decision of future cases. Every day it becomes more difficult to extract any legal principle from the enormous heap of *débris* from under which it has to be picked out; and if the Law itself is to be preserved and amended, the first

condition is to save it from being smothered by the hands of those who undertake to present it in an accessible shape.

In a valuable paper which the Committee received from Mr. G. W. Hemming (the senior Reporter in V. C. Wood's Court), who, however, prefers an official system to the present, and sees no middle course between them, the objections to the present system are thus spoken of:—

I think it may be assumed that very strong objections exist to the present system of reporting, but I doubt much whether the Bar are at all agreed as to what the objections are.

The following are the points most dwelt upon:—

1. Singleness and authority in the Reports are insisted on, on one side, as essential to certainty in the Law; while, on the other, competition and multiplicity are supposed to ensure greater general accuracy, though at the expense of occasional conflict and uncertainty.

2. Multiplicity of Reports is objected to by some as entailing on the Bar needless labour and useless expense, while others extol the system as affording the best possible education to a large body of industrious juniors.

3. Self-constituted and competing Reporters are supposed to be a greater check upon negligence, whether on the Bench or in the reporting staff, than would be supplied by an official staff of Reporters, while against this it is argued that the free trade system inevitably leads to the reporting of a dozen worthless cases for one of real value as a landmark of the Law.

And, after dealing with the two chief difficulties in either system, Finance and Patronage, his crowning reason for thinking it desirable to do away with the present system is thus stated, almost in the language of the "Review;":—

The monstrous absurdity of smothering the Law in a mass of printed Reports, all the pith of which might be condensed into perhaps a tenth of its present bulk, does, I think, outweigh every other consideration; and I am satisfied that no remedy will ever be found for this evil except in some kind of official system.

Again, in the masterly address recently delivered by Sir James Wilde, as Vice-President of the Department of Jurisprudence and Amendment of the Law, at the last meeting of the Social Science Association at York, the learned Judge thus describes the public mischief of an accumulating mass of undigested Case-Law:—

This vast agglomeration breeds not only confusion in those who are to be bound by the Law, but inconsistency in those who administer it. No power of assimilation can keep pace with that of such productions, and the tribunals, occupied to the full with the business before them, have little time to master the results of contemporaneous decisions. *This evil is aggravated by a competitive system of reporting, and the record of useless decisions.*

More than half a century ago, the same views had been expressed with much animation by Mr. Hallam, as quoted in my former letter:—

We accumulate precedent upon precedent, till no understanding can acquire,

nor any intellect digest, the mass of learning that grows upon the panting student.—See *Mid. Ages*, vol. ii. p. 123.

And so universal and deep-seated is the conviction of the evils of the existing system that the shafts of satire have been lately levelled at them by the poet.

— The lawless science of our Law—
That codeless myriad of precedent,
That wilderness of single instances,
Thro' which a few, by wit or fortune led,
May beat a pathway out to wealth and fame.

Aylmer's Field.

I have discussed the merits of the *laissez faire* policy more at length than, after the resolution of the Bar affirming the necessity for amendment, may appear to be called for; but I have desired to make plain the two conclusions at which my own mind has arrived: namely, first, that the present system, as a remedy for the evils it affected to redress, is founded upon a false principle; and, second, that the evils now complained of are in great measure the fruit of the application of that false principle. The false principle is this—permitting Law Reporting for citation as authority to become a matter of mere commercial enterprise, without any check or control in the interest of the public. The private interest, which is the only proper and legitimate inducement to all commercial enterprise, is sure to predominate over all considerations of public benefit, whenever the two conflict. The only question which the private adventurer proposes to himself is, "Can I secure a profit?" and he makes all his arrangements conduce to that end. The public interest is not cared for by him further than as his chance of profit may be affected by the consideration of an over-stocked market. No remedy can, in my judgment, be effectual which does not eliminate commercial profit from reporting, and place reporting under control. Why is quantity, not quality, the test by which proprietors and publishers hope to get subscribers? Why is the advertisement that so many hundred cases have been reported in the last half-year the best recommendation that the publisher can put forward to attract custom? Why does the authorized Reporter feel himself obliged to report cases which, being of no value as precedents, he in his better judgment would not report? One and the same answer must be given to all these questions: the expectation of commercial profit. To secure that, as the prime object, the public interest is necessarily made subordinate. In this respect the just order of things applicable to the relationship of principal and accessory, master and servant, is reversed as completely as is the true rule of political economy applicable to supply and demand.

Having thus endeavoured to deal with the question as viewed by those who deny the necessity or practicability of any scheme of amendment, I will now deal with the views of those who differ only as to what the amendment should be. These differences range themselves, in principle, under only two divisions—1. Amendment by external authority; 2. Amendment by internal regulation and management. Of those who desire amendment by external authority there is a subdivision, before adverted to, into those who desire that the amendment should extend to the remodelling of our system of Reporting altogether, according to the joint proposal of Mr. Joshua Williams, Mr. Serjeant Pulling and Mr. Westlake, and those who, as proposed by Mr. Montague E. Smith, would content themselves with the appointment of Official Reporters, to be selected by the Lord Chancellor and paid by the State—the Government taking upon itself the sale of the Reports and compensating existing interests.

As regards the plan proposed by Mr. Joshua Williams, Mr. Serjeant Pulling, and Mr. Westlake, I may state that it did not receive support from any other member of the Committee: it involved changes so sweeping, and was apparently attended with so many difficulties—among others, those of finance, compensation, patronage, and judicial influence—that it was not regarded as a practical remedy for a practical grievance, however philosophical the principle upon which it rested might be, namely, that of making the Law certain by assuring equal certainty to the grounds of the decision, and the decision itself. Upon the proposal being rejected by the Committee, Mr. Serjeant Pulling and Mr. Westlake continued to work with the Committee, assisted in the preparation of the scheme, and concurred in the recommendation for its adoption. Mr. Joshua Williams has stated his reasons for not concurring in the scheme in a separate paper which he caused to be printed and circulated.

The choice of remedies will, I venture to think, be found to lie between a strictly official system, as proposed by Mr. Montague Smith, and a system based upon professional regulation and control, as recommended by the Committee.

I would desire to state as explicitly as I can the objections which, speaking for myself, appear to me to exist to an official system. In considering these objections, it is impossible not to bear in mind that it has been once tried in this country and failed. I allude to the attempt made by Lord Bacon in the time of James I. to revive the ancient office of Reporter, which had been dropped by Henry VIII. A copy of the Letters Patent authorizing the appointment of Official Reporters is printed in Rymer's "*Fœdera*," vol. xvii., p. 27. Two persons appear to have been appointed Reporters under these Letters Patent. The title to Serjeant Hetley's Reports informs us that he

was one of the persons so appointed; the name of the other is not known. Hetley's single volume of Reports appears to have been the only fruit which resulted from this attempt of Lord Bacon to reform the Law, and these Reports were never held in much repute. The fact thus remains for our guidance, and perhaps warning—that the only attempt ever made in this country to appoint Official Reporters proved a failure. The reasons of the failure we don't know, and can only now conjecture. I am quite ready, however, to admit that the circumstances which at the present day attend the administration of justice in this country—the learning and integrity of the Bench, the learning and independence of the Bar, the publicity of proceedings in all Courts of Justice, and the influence of a free press, afford securities against chances of failure in an official system which did not exist 250 years ago, when the former experiment was tried. Nor do I forget that in the United States of America a system of appointing Official Reporters has to a certain extent been adopted, as stated in the report of the sub-Committee. I have not, however, been able to satisfy myself whether the American experience of the results of Official Reporting is such as to lead us to follow their example. In a letter which, in the early part of the present year, I received from Mr. John William Wallace, of Philadelphia (the author of the valuable work entitled "The Reporters Chronologically Arranged, with Occasional Remarks on their Respective Merits"), he says:—

Allow me to say to you, Sir, that the Bar of this country looks with interest to the excellent efforts which are being made to improve the system of Reporting in England. We have suffered as much, or even more, than you have, though not exactly from the same causes—I mean with our Reports. Reference, I see, is made to our system. England may possibly take some suggestions for good from us; *not, however, many.*

I venture, therefore, to doubt whether, from our own experience in times past, or from the experience of any other country in modern times, and especially the experience of the American Republic, any *à priori* conclusions in favour of an official system can be derived. We of the present day must, I believe, decide the question for ourselves upon such materials as in the present day exist for our judgment.

The objections which weigh with me to an official system are of a practical nature, and I will confine them to *patronage* and *finance*.

1. As to *patronage*. As an official system, accompanied by compensation to existing interests, would supersede and become the substitute for all the existing sets of Reports, it would have to supply the place of what Lord St. Leonards, in his communication to the Committee (and which has been recently published) calls the earlier and the later report, as to which his Lordship adds—what I believe will be very generally, if not universally, admitted—that the Profession would not

now be willing to lose either. The same view of what the present requirements of the Profession are, was taken by "The Law Times" in the number of the 10th of October, 1863. In a leading article, after adverting to the absurdity of half-a-dozen pens and as many presses being engaged at the same time in noting and printing the same cases, the Editor sensibly observes, "that one carefully prepared, and therefore slowly produced, authorized report, and one speedy report, the latter to be citable only until the case should be reported in the regular report, is all that the profession wants." This earlier and later report must, therefore, I conceive, be provided for under any system that professes entirely to supersede the present. The patronage must extend to the appointment of a number sufficient to ensure the efficient and punctual preparation and publication of the double set. At present there are about 130 members of the Bar engaged in reporting. Perhaps half the number would suffice under an official system. What would be the aggregate amount of salaries to be paid? Would the salary be fixed with reference to the intrinsic value of the labour and skill employed, and a chief Reporter be paid after the rate of a chief Registrar? or would the salary be regulated by the average rate of the salaries or profits now received by Reporters?—a serious question for probable candidates. Upon either computation the annual amount would be considerable. The proposal is that all this patronage should be vested in the holder of the Great Seal. In whom else could it be vested? And is this patronage to be exercised by the Lord Chancellor independently of, and without the concurrence of, the presiding Judges of the respective Courts? and are the appointments to be for life or during good behaviour, or during pleasure, or for a specified term, with or without eligibility to re-appointment? What effect, I would ask, would such appointments have upon the independence of the Bar? Would not such a system have a strong and direct tendency to induce subservience to the powers that be, and impair all proper habits of self-reliance? One of the advantages of the present system is, that the Reporters are among us and of us. The instincts, habits, and feelings of the barrister are not changed or weakened by becoming a Reporter. Under an official system this would necessarily be otherwise. The sympathies of a Reporter with his non-reporting brethren would be loosened, if not destroyed; his *esprit de corps* would be no longer the same; he would become a gentlemanly official, isolated, independent—among us still, but no longer of us. In proportion as the independence of the Bar is to be valued for the sake of itself and the public, so is the prejudicial effect of a system of official appointments greatly to be feared. But apart from considerations affecting the Bar, I doubt much whether jealousy on the part of Parliament and the public would not present

an insurmountable obstacle. Lord Brougham has recently borne his testimony to the fact that jealousy of patronage has been a great obstacle in the way of the appointment of public prosecutors (see report of a meeting of the Jurisprudence Department of the Social Science at York, on the 27th September, in "The Jurist" of the 8th of the present month of October). And would not the ground of jealousy of Government influence be at least as great in the case of Official Reporters?

But suppose all objections to patronage, whether political, professional, or judicial, to be surmounted, the difficulty of finance has to be encountered. The proposal is, that the Government take upon itself the compensation of all existing interests, the payment of the salaries of the Reporters, and sale of the Reports to the public at cost price. First, as to compensation to existing interests. Ought the money of the public to be applied to such a purpose? Mr. M. J. F. Brickdale, one of the Conveyancing Counsel, in a printed communication which he forwarded to the Committee, dealt with this question of compensation in a manner which puts the case very clearly:—

I will add a few remarks on a question which has been touched on, but not (as far as I am aware) much discussed or considered,—I mean the question of the vested interests of the present Reporters and their publishers.

Legal claims, of course, they have none; but have they any moral claim to compensation? I submit that, on principle, they have not; for on what grounds has the monopoly of authenticity been granted to Barristers' Reports? Surely on the ground that those Reports are made for the public benefit, and for the furtherance of the cause of good Law. It cannot be supposed that such a monopoly would ever have been granted to men who confessedly produced Reports only as a profession, and for their own private benefit, either in money or in reputation. The present body of Reporters, therefore, are availing themselves, for their own advantage, of a privilege which they would never have obtained, if it had been supposed that it would be turned to such an account.

* * * * *

They found Reporting treated as a recognized profession, and took it up as they found it; but for the reasons above given I contend that they have, on principle, no claim to compensation; and if they have none neither can their publishers have any.

Whether to avoid opposition, and out of consideration for hard cases (where there is any hardship), and, I may add, out of respect for the high character of the present Reporters as a body, it would be expedient to make compensation, is another question. It should be remembered, however, that a considerable number of the present Reporters might find employment under any new system: and as the law publishers are limited in number, many, if not the whole of them also might have an interest in the profits of whatever is produced."

If there is no right to compensation, can it be believed that any

Government would be prevailed upon to apply to Parliament for authority to raise money for such a purpose?—or, if a Government were weak enough to do so, that Parliament would ever sanction the application!

And as to the salaries of the Reporters, why should public money be permanently applied for such a purpose? There does not seem to be a difference of opinion among those who are best acquainted with the subject, but that, if a system were established under which the Profession could have what they want and nothing more—Reports prepared and published with accuracy, expedition, regularity, and cheapness—the demand would be so large, uniform, and steady, that they would be not only self-supporting, but leave an available surplus. Why should public money be applied to support a system, which, if properly conducted and managed, would support itself? Let those, I say, whose interest and duty it is to inaugurate, and establish such a system, co-operate for that purpose. It is well it should be known what mischievous effects the present competitive system has had, and continues to have, upon the demand for Reports. The fact was brought before the Committee that, notwithstanding the great increase in the number of Barristers, Attorneys, and Solicitors, and notwithstanding the increase also in the number of our tribunals both at home and abroad, and our international relations with foreign countries, the demand for Reports is not greater, if it be so great, as it was thirty years ago. In the days of Barnewall and Cresswell, before competition had displaced monopoly, the regular circulation of the Queen's Bench Reports was 4000, occasionally more, and that of the Chancery Reports, 2000. Now-a-days, with the exception of "The Law Journal," circulation must be reckoned by hundreds, not by thousands. The effect of competition carried to its present excess, has been so to limit and discourage the demand which naturally exists for Reports, that a great proportion of the profits which would be derived from legitimately supplying the profession and the public with what they require, are not realised at all. Publishers and proprietors, by recklessly competing with each other in the establishment of rival Reports, may and do reduce each other's profits to a minimum. The multiplicity of the Reports has the effect of contracting the demand for them; as all cannot be taken, many practitioners refuse to take any. Is this a state of things which would justify the application of a farthing of public money? I think not. But it may be urged that, if the Government undertakes the sale of the Reports, why should they sell at cost price; why not at a price which would be remunerative? and if such a demand as is suggested really exists, funds would then be forthcoming to compensate existing interests, and provide salaries for Reporters.

This suggestion would involve the creation of a board of management and the appointment of officers and dependents, which, I venture to think, Government would be unwilling to undertake, but (be that as it may) which had much better be left to those directly interested.

Upon either of the two rocks, Patronage and Finance, I venture to think an official system would make shipwreck; and these practical difficulties outweigh all theoretical objections, though these would not be without their weight in the judgment of many.

I come now to the consideration of the scheme recommended by the Committee. It is an attempt to give effect to the opinions of those who desire an amendment of the present system, and that such amendment should be based upon professional management and control, in preference to a strictly official system.

The Report and Scheme are signed by fifteen out of the twenty-two members who constituted the Committee. The seven who have not signed are the Solicitor-General, Mr. Montague Smith, Mr. Mellish, Mr. Denman, Mr. Joshua Williams, Mr. Sweet, and Mr. Henry Matthews.

The Solicitor-General stated by letter that, having been prevented by his official duties from attending any of the meetings of the Committee, he thought he ought not to take any part in either the Report or Scheme. The reasons of the other gentlemen for not signing the Report or concurring in the Scheme can be properly stated only by themselves; probably the objections of several will be found to turn upon a preference for an official system, accompanied with compensation, excepting, of course, Mr. Denman, who from the first, and throughout, has maintained the inexpediency of any change in the present system.

The Committee, in their Report, have abstained from discussing the merits of the Scheme, nor do I propose to discuss them in detail; but I am desirous of stating explicitly my own view of the principle of the Scheme, and the object sought to be attained by it. My view of the principle of the Scheme is this—it recognises the privilege of Reporting *for citation as authority* as a privilege of the Bar, vested in it for the public benefit, and that the exercise of this privilege by individual members ought to be subject to such control as may be necessary to secure the accomplishment of the public end for which the privilege is conceded; that this control should be exercised by an authority which will be interested to preserve and uphold the privilege in its integrity and independence, a control which had better therefore be established within the limits of the Profession itself, rather than externally by the Government or the Judicature; that the elements out of which the controlling power should be created

should, as far as possible, be sought for and taken from the existing institutions of the Profession; and that the powers to be given to the controlling body should be exercised by them, as far as practicable, in harmony with existing interests; that the controlling body should have the qualities of permanence and periodical renovation, and its members should individually have the stimulus of an active professional interest coinciding with the public interest. The Council of Reporting proposed by the scheme satisfies, in my judgment, these several conditions. There is no novelty in its design. The Council of Education, composed of members of the four Inns, is an instance that the Inns of Court recognise their duty to co-operate in a professional object for the public good, and, within proper limits, to apply their funds for such an object. The Council of the Law Institution again is an instance of a body of professional men who, animated by zeal for the common interest of the Profession, superintend and manage matters of the gravest professional importance in a manner which the Profession and the public approve.

A further principle of the scheme is this—it is based upon the co-operation and sustained confidence of the several branches of the Profession; the Judges, the Bar, and the body of general practitioners. To this end it recognises the just limits of the judicial influence by submitting the appointment of Reporters to the approval of the chief or presiding Judge; it sustains while it controls the admitted privilege of the Bar, and it embraces within its operation the body of general practitioners as parties deeply interested in, and whose support is essential to its success. Resting thus upon the co-operation and confidence of the several branches of the profession as its basis, the object which the scheme has in view, and which it seeks to accomplish through the machinery of the proposed management, is to supply the Profession with what they want, namely *one set of Reports* which shall be prepared and published with expedition, regularity, and at moderate cost, and from the accuracy and completeness of their execution, become the standard authority of the Profession—that to which all,—Judges, Advocates, Text Writers, Practitioners,—may refer uniformly and with confidence. Such a set of Reports (if existing interests were fairly and justly dealt with, as they *must* be) would absorb the present sets of authorized Reports and also "The Law Journal;" and thus supply the place of those later Reports to which Lord St. Leonards refers, and become that one carefully prepared authorized report (and when published the only report to be cited) to which "The Law Times" refers. The earlier report, as Lord St. Leonards calls it, or the speedier report, as "The Law Times" calls it, would thus be left to be supplied by competition; unless experience should shew that the same system

of professional management and control could, for the same annual subscription, supply the earlier or speedier as well as the later or carefully prepared authorized Reports.

Whether the object proposed by the scheme shall be accomplished or not, depends upon the co-operation of the different branches of the Profession—the Judges, the Bar, and the body of general practitioners.

The scheme does not propose to establish a monopoly by authority: whatever extent of exclusive citation might follow from the establishment of one standard set of Reports, would be the result of professional choice and will, and these would continue only so long as they were deserved; and I think it may be taken for granted that, so long as the Reports continued worthy of professional confidence, that confidence would not be withdrawn.

But though the principle may be good and the object desirable, there is a wide and difficult interval between merit and success. The batteries of self-interest command the passage, and at this time are well manned. How often have I been told the scheme cannot succeed—the opposition of vested interests will prove too strong. Adverting to the proceedings at the meeting of the 1st of July last, it is said; see even the authorized Reporters, whom the scheme proposes to propitiate, are opposed to it. Mr. W. M. Best, the senior Reporter in the Queen's Bench, will be supposed by the public to represent the views of the authorized Reporters at the Common Law Bar; Mr. A. E. Miller, the coadjutor of Mr. Hemming, will in like manner be supposed to represent the views of the authorized Reporters in the Court of Chancery. I venture to doubt the accuracy of these views. I have no reason to think that Mr. Best represents the views of the Common Law Reporters, and I have reason to think that Mr. Miller does not represent the views of some, at least, of the Chancery Reporters. But if it is to be assumed that, to any important extent, the authorized Reporters would oppose the change proposed, it will be well to see how they now stand toward the Profession, viewing them as having undertaken the discharge of a public duty.

Mr. Best moved, and Mr. Miller seconded, an amendment proposing to strike out of the scheme all that related to the appointment of Editors. Now, it will be observed that the authorized Reports are the only set which have no Editors—"The Law Journal," "The Jurist," "The Law Times," "The Weekly Reporter," and "The New Reports" have each their Editors. Practically, therefore, there is no difficulty in obtaining the services of a number of able and accomplished Barristers, willing to act under the control and supervision of Editors; and whatever objection may be taken to the multiplicity

and multifariousness of the *un*-authorized Reports, and the quantity and quality of the matter reported, none can be taken to their cost, none to the expedition or regularity of their publication.

Under a system of editorship, therefore, in all the existing sets of Reports, other than the authorized, the Profession and public, although burdened with the evils so graphically described by the contributor to "The Saturday Review," have at least the solid advantage of expedition and regularity in publication, combined with moderate cost. I believe the whole five sets would not cost more than £15 a year, while a complete set of the authorized Reports could not be had much, if at all, under £30. Now how stands the case of the authorized Reports in these matters of expedition, and regularity of publication and cost. Mr. Best, in his address to the meeting, says, in effect, we don't want Editors, because I and my colleague supervise each other's labours, so that each acts as Editor to the reports of the other; and we are the descendants of a long and illustrious line of Reporters, who have always pursued the same system. But this system of voluntary editorship does not help towards either expedition or regularity of publication. I take the last number now lying before me of Best and Smith's Queen's Bench Reports, published on the 14th of September, 1864, part 2, vol. iv., of cases argued and determined in Trinity Vacation and Michaelmas Term, 1863. The reports of the cases argued and determined in the present year, 1864, are yet to come; for these the Profession must, for an unknown period, depend upon "The Law Journal" or one or other of the weekly publications—so much for expedition. The same number also states, "That these Reports are in continuation of those by Ellis and Blackburn, Ellis, Blackburn and Ellis, and Ellis and Ellis. *The remaining portions of the latter are in preparation, and will be completed with as little delay as possible.*" I now turn to the last number of Ellis and Ellis, thus referred to, and I find the part contains the reports of cases argued and determined in Hilary Term and Vacation, and Easter Term, 1860; and, though the date of publication is not given on the face of the part, it was published, as is well known, during the present year 1864; and as Best and Smith's Reports commence in Easter Term, 1861, the authorized reports of decisions in the Queen's Bench, from Easter Term, 1860, to Easter Term, 1861, are yet unpublished. To the last number of Ellis and Ellis is affixed the following notice: "In the composition of Ellis and Ellis' Reports, Mr. Francis Ellis continues to have the valuable assistance of Fred. K. H. Cock, Esq., of the Inner Temple, Barrister-at-Law." So that the reports of Ellis and Ellis, when completed, will not be the reports of the very learned Reporters whose names they bear. The lamented death of Mr. Ellis, leaving two years

of reports in arrear, it will be said is the unfortunate cause of this interruption in the regular publication of the series. Granted: but are not such interruptions frequent in the series of authorized Reports? and are they not the almost inevitable consequence of the system upon which the authorized Reports are conducted? and, to the extent to which authorized Reports are of any value, are they not injurious to the Profession and to the law? Such interruptions and irregularities, it is well known, are not confined to the Queen's Bench Reports; the system produces its evil fruits in the Court of Chancery. The fifth volume of Russell's Reports never has been, and I suppose now never will be, completed. We have only during this summer of 1864, had the eighth volume of De Gex, Macnaghten, and Gordon's Reports completed, bringing the reports of decisions in the Court of Appeal in Chancery down to 1857; and the third volume of De Gex, Fisher and Jones, which ought to contain the decisions in the Court of Appeal in Chancery from the end of 1861 to Michaelmas Term, 1862, is yet incomplete; part 2, volume iii., of these Reports (bringing the decisions down to December, 1861), was published May 5, 1863; and the first number of the existing series of De Gex, Jones, and Smith, published November, 1863, contains this notice: "The lamented death of Mr. Fisher, and the time required for arranging and *editing* his notes of the cases reported by him, have prevented the immediate completion of the series of De Gex, Fisher and Jones' Reports." From this note it would seem that the authorized Reporters in Chancery have something of the same notion of editing their colleague's labours as Mr. Best.

These matters are not brought forward from any desire to make invidious charges against anybody. They are exhibited as the natural fruits of the system upon which the authorized Reports are at present conducted, and appear to me to have a very close and direct bearing upon the amendment of Mr. Best and Mr. Miller. Exclusive of the *Nisi Prius* Reports there are, as stated in my former letter, sixteen different sets of authorized Reports, and each of these sixteen sets is prepared and published according to the convenience, views, and interests of the sixteen different sets of gentlemen whose names they bear, and their respective publishers. There is no community of design, arrangement, management, or interest among them. Some find it to their interest to be more expeditious and more regular than others; but all find it necessary, by reason of their very limited circulation, to be costly. I have now lying before me the October number of "The Law Journal," and I find the reports of cases in the Courts of Chancery, Probate, Matrimonial, and Admiralty, are stated to be from Michaelmas, 1863, to Michaelmas, 1864; each of the three Common Law Courts, from Easter to Trinity Term, 1864, and

the Magistrates Cases come down to the 4th of June, 1864. Now, without instituting comparisons between the merits of different Reports and Reporters, I venture to ask whether the intrinsic value of the difference between the reports of decisions in the year 1864, which the Profession now possesses in the columns of "The Law Journal," and the reports of the same cases when they shall hereafter be published by the authorized Reporters is to be measured, in favour of the authorized Reports, by the difference in cost. Can the authorized Reporters think that the superiority of their Reports over those of "The Law Journal" is in proportion to the difference of cost? If they do, perhaps the Profession would not agree with them.

If the authorized Reporters consider that the establishment of a proper system of control and a combined management is inconsistent with their separate interests and individual self-respect, be it so. Should the scheme be adopted by the Bar, although the non-adhesion of the authorized Reporters would be much to be lamented, I don't know that it would prove an insurmountable obstacle to success. The Council might be able to get on without them; and, although it would be matter of regret that Reports calling themselves authorized should still continue to be published, it is obvious that a small proportion of that professional support which would be necessary to launch the scheme, would, if withdrawn from the authorized Reports, cause their annihilation. But I hope, by the time the meeting is held, it will be found that a more just and reasonable view will be taken by the authorized Reporters than that which is insisted upon by the amendment.

I have insisted that the present scheme rests for its foundation upon the co-operation of all branches of the Profession. The contributor to "The Saturday Review," to whom I have before referred (see the number for July 9th, 1864), has, in a vein of grim merriment, referred to the scheme as an attempt to establish a Co-operative Law-Store, without capital. As to capital, none surely ought to know better than the contributor that, with an ample subscription list, there is no need of capital. In the cases (and some are known to exist) in which, under the present system of authorized Reports, the Reporter is himself the owner of the Reports, and employs the publisher, and not the publisher him, does the Reporter find any capital? Notoriously not. Having an ascertained amount of circulation (small though it be), yet, the price being high, a certain amount of gross produce is got at; upon this a computation is made of the cost of paper, printing, advertising, and other expenses, and these being deducted, an agreed sum is paid by the publishers to the Reporter, the publisher taking all risks and finding all necessary capital. What is thus done satisfactorily in a small way may, with

equal satisfaction, be done in a large way. What can be effected by a meagre circulation of 350 or 400 can surely be effected by a subscription list of 2000. The notion that there is a necessity for a subscribed capital has suggested to several persons the idea of establishing a Joint-Stock Company, with a considerable nominal capital, to be taken in shares with limited liability. But such a plan I consider neither necessary nor desirable; first, because, for the reasons I have stated, a subscribed capital is not needed; and, secondly, because if there were a share-capital, profits would have to be divided with shareholders; the commercial element would then necessarily be introduced, and a conflict of pecuniary interest would at once arise between the Reporters and the company, a conflict which, in my opinion, it is most desirable, in the interest both of the Reporters and the public, to avoid; and, thirdly and chiefly, because, in my opinion, whatever profits may remain after payment of the costs of printing, publication, and management, liberal remuneration to Reporters, and such compensation (if any) as may be proper to be granted, ought not be applied to the purposes of private gain; but, as the profits are really moneys derived from that portion of the Profession and the public who are obliged to purchase reports for the purpose of their calling, and not their private pleasure or advantage, these profits thus savouring of involuntary contributions by the public, ought to be applied to some public object connected with the interests of the Profession and the advancement of the Law. I may observe, however, that it has often been matter of surprise to me that the parties who are now interested as Reporters, publishers, and proprietors, in the existing sets of Reports, knowing, as they so well do, what it is that the public and Profession want, and how profitable it would be to supply it, have not been able to agree to make arrangements among themselves for the purpose of supplying one standard set of Reports. Such an arrangement is not now hinted at for the first time; but I fear that the inevitable rivalries and jealousies of trade, and the difficulties of adjusting the several proportions of interest and advantage, present an insurmountable obstacle to a course being adopted which prudence and a shrewd foresight would point out as at once practicable and desirable for parties whose interests in the present state of things might be prejudiced by an entire change of system. But why should not the fully of individuals help to the public good?

And as to invoking the principle of co-operation. Now that the contributor has had a Long Vacation enjoyment of his drollery, I would ask him in seriousness whether the co-operative principle is not, according to well-tried experience, the best corrective of the evils of competition carried to excess. Excessive competition so diminishes

legitimate profits that adulteration is resorted to, and when the working man finds that the necessaries of life, though cheapened in price are deteriorated in quality—when he finds sloe leaves in his tea, sand in his sugar, lard in his butter, and his milk half water or worse, what does he do to rid himself of these evils? He co-operates with his brother consumers to procure the articles he wants at first hand and at cost price, and thus gets rid of the middle men and their oppressions together. The parallelism need not be dwelt upon.

An objection has been taken by Mr. Joshua Williams to the scheme of the Committee which I think it desirable to notice. He thinks that the proposed machinery of a Council of Management, to be incorporated by charter, with powers confirmed by Act of Parliament, is too important for the purposes proposed to be accomplished. But are not these purposes very important? The several Courts of Justice may be regarded as living fountains, from whence daily and hourly well forth those tributary streams which, conjoined, make up the current of the Law. Is it not of the greatest importance that these should be drawn as pure as possible from the fountain-head? Is it a quixotic or too sanguine an expectation to anticipate that, when the process of digesting our law shall be entered upon in earnest (and in the present lull of party strife the thoughts of many of our public men seemed to be seriously turned towards that object), it will be found that a well-arranged system of reporting is an essential adjunct? Might not a Minister of Justice, to whose appointment Mr. Williams looks forward with hopeful interest, find such a system a useful auxiliary to his labours? May it not be expected that in the Annual Report and Statement, which it is proposed the Council should publish, the Profession and public would find a careful exposition of matters connected with the administration of Justice—such as, inconsistent and incongruous decisions, anomalies and inconveniences in the law, defects in existing legislation,—which would materially assist a Minister of Justice in the discharge of his important duties, and facilitate the amendment of the law and the improvement of our jurisprudence? I am sanguine enough to believe that the successful establishment of a sound system of reporting, controlled and managed by the Profession, may be worthy of the encouragement of the Government and the Legislature, and be productive of results of the highest benefit to the public.

If, Sir, you have spared time to read what I have written, I feel I must have trespassed very long upon your patience, and will at once conclude, subscribing myself, with profound respect,

Your obedient humble servant,

W. T. S. DANIEL.

10, OLD BUILDINGS, LINCOLN'S INN.

29th October, 1864.

This letter was largely circulated among the Profession, and, to some extent, among the public. I sent a copy to the Attorney-General, and he shortly afterwards fixed the 28th of November, being the third day after the end of Michaelmas Term, for the further meeting, to be held in Lincoln's Inn Hall at 4 P.M. Due notice was given of the meeting, and it was numerously attended. It had been arranged that Mr. Amphlett, as Chairman of the Committee, should attend and renew the motion for the adoption of the Bar Scheme; but on the 27th of November, the day before the meeting, a death occurred in Mr. Amphlett's family which would prevent his attendance, and he requested me to supply his place, which I agreed to do; and these circumstances were at once communicated to the Attorney-General. The meeting was accordingly held, and the following is a transcript of Mr. Tolcher's shorthand notes of all the proceedings of the meeting. These I have thought desirable to give at length, as furnishing the most satisfactory record of this important meeting.

LINCOLN'S INN HALL : *Monday, November 28, 1864.*

REPORT OF PROCEEDINGS AT ADJOURNED MEETING OF
THE BAR

*To take into consideration the Scheme of Reporting recommended by the
Committee appointed on the 2nd of December, 1863.*

The ATTORNEY-GENERAL (Sir Roundell Palmer) in the Chair.

[Transcript of Mr. TOLCHER'S Shorthand Notes.]

The CHAIRMAN :—Gentlemen, it is necessary for me to remind you, in a very few words, of the cause of the assembling of this meeting. Every one present is probably aware, that on the 2nd of December in last year a meeting of the Bar was held on a requisition which had been presented to me very numerously signed by members of the Bar, in all branches of that Profession, requesting that such a meeting should be summoned. Well, at that meeting a Committee was appointed to prepare a plan for the amendment of the present system of preparing, editing and publishing Law Reports. That Committee consisted of gentlemen very much respected and very eminent in all branches of the Profession, both of the rank of Queen's Counsel and below the Bar, and they very carefully considered the subject and reported on the 14th of June, 1864. Their report and recommendations have been largely and extensively circulated, and, no doubt by this time have been very generally considered. It was felt proper,

that, they having done that, before the Long Vacation, the Bar should have the opportunity of meeting again and considering whether the subject was ripe for action or not. Accordingly, a meeting was held here on the 1st of July last, and then Mr. Amphlett, who I regret to say is not able to be here to-day on account of a domestic calamity, moved the adoption of the recommendations of the Committee. That motion was seconded; and Mr. Best and Mr. Miller moved and seconded an amendment to omit that part of the recommendations which related to the supervision of Editors; but before those subjects were further considered, Mr. Wordsworth moved, and Mr. Malins seconded, an amendment which superseded both those motions, "That the further consideration of the subject should be postponed till a day to be fixed by the Attorney-General in the month of November next," that is the present month. No option was left to me but to appoint a day which should be—I will not say the most convenient but—the least inconvenient to the Bar after Term for the further consideration of the subject. That I have done, we meet here to-day, and I am quite sure that all the observations that will be made on this important subject by any gentleman who may address you will receive a fair, candid and dispassionate consideration. [*Hear! hear!*] Gentlemen, I now call on Mr. Daniel, who will renew the motion that was made by Mr. Amphlett at the former meeting. [*Cheers.*]

MR. DANIEL:—Mr. Attorney-General and Gentlemen. The communication which I received this morning from my learned friend Mr. Amphlett of the loss which he sustained in his family only yesterday has cast upon me a duty which I was not prepared to undertake, and which I had not expected I should have had to discharge. Nor was it until I received just now an intimation from the Attorney-General that he considered the adjournment which had been carried on the motion of Mr. Wordsworth in fact displaced the original motion and the amendment of Mr. Best and Mr. Miller upon it, that I was aware there would be any necessity for me to move again the original resolution. I, therefore, do so now under the circumstances I have explained.

Gentlemen, there has been circulated by me what, I hope, if it has been read, will not have been otherwise than acceptable to my professional brethren, a careful shorthand note of what took place on the former occasion; and therefore I do not intend to repeat what was then said. I will assume that this meeting is in possession of what took place at the meeting on the 1st of July last, and the grounds on which my friend Mr. Amphlett proposed the adoption of the Report.

Gentlemen, I will take this opportunity of entering into certain particulars connected with the scheme which I understand have been

made matter of question. The principle upon which the scheme recommended by the Committee is based is this, that there should be established, if possible, under professional control, without the interposition of external authority, one set of Standard Reports, which should be prepared with such care and skill, published with such regularity, and at such a moderate cost, as to command the confidence of the Profession. I do not know whether those present think that that is a desirable object, but that is the object which the Committee had in view in their recommendations. [*Hear ! hear !*] I do not intend to go over the old grounds about the evils of the present system. I neither desire to enlarge upon them nor to do otherwise than allude to them upon the supposition that they are present to your minds. Now if such a set of Standard Reports could be established, I apprehend there are very few of the reflecting members of the Profession who would not think it a great advantage. In the scheme which the Committee here recommended they have endeavoured to devise a practical remedy for a practical grievance. They considered that the duty which you had devolved upon them was one which called on them to look into the matter as men of business and not in any other light. We were not appointed as Law Reformers to entertain projects for the reform of matters of Law, but to devise, if we could, a better system of preparing, editing and publishing Law Reports than that which existed. With that view, the Committee endeavoured to direct themselves to the consideration of this question—upon what footing, looking at it in a commercial point of view, could a scheme be based which was likely to be self-supporting. The Committee having obtained from their professional brethren their views as to the desirableness of a change, but not having the advantage, to the extent they would have desired, of obtaining information from parties interested, but of that they could not complain because parties interested were not likely to give information on matters that would affect their own interests—the Committee were able to ascertain what was the circulation of the authorized Reports previous to the commencement of the present system of competition. The Committee went back to the time of Barnewall and Cresswell, and Merivale, and Jacob and Walker—the years 1824 and 1825. The system of competition did not begin until the year 1832 or 1833. They ascertained from sources of the authenticity of which they were perfectly satisfied, and which has been confirmed in various quarters since, and can be confirmed I daresay by gentlemen in this Hall, that the regular issue of the Queen's Bench Reports in the years 1824 and 1825, and up to the end of the time of Barnewall and Cresswell, which was in 1829 or 1830, was 4000, and that the regular issue of the Chancery Reports during the same period was 2000.

Then, resting upon the fact of 2000, which was the smallest amount of the circulation forty years ago, the Committee endeavoured to ascertain, whether, on that small circulation, a scheme could be devised which, commercially speaking, would be self-supporting, at a subscription of five guineas per annum. For that purpose the Committee endeavoured, through several of its members, to obtain information from those who were competent to give it. I endeavoured to obtain such information, and I was enabled to obtain it through application to a printing firm in extensive business, strangers to me, but introduced to me by my friend Mr. Cole—Messrs. Clowes of Duke Street, Stamford Street. I requested them to furnish me with the cost price of a set of Reports (and I purposely selected one of the most expensive of the present authorized Reports), taking a part of Mr. Clark's House of Lords Reports, a part which is charged to the Profession at 12s. 6d. I requested them to give me an estimate of what was the cost of printing, paper, sale, and distribution of such a part, excluding from calculation the publisher's commission and all proprietor's profits. The result was, a set of figures (I do not propose to trouble you with reading the figures in detail unless desired) which resulted in the cost per copy, which was the datum on which the Committee proceeded, and which was this—if 500 of this 12s. 6d. part were printed, 1s. 10½d.; if 1000, 1s. 4½d.; if 2000, 1s. 1d.; if 3000, 11½d.; if 4000, 10½d.; if 5000, 10¼d. [*Loud Cheers.*] These figures seemed to me so striking, that, if true, I could not avoid coming to the conclusion that there was a radical defect in our present system as regards consumers, and a radical defect also in our present system as regards Reporters; for if the actual cost of a 12s. 6d. part, of which 2000 were supplied, would be 1s. 1d., there must be something wrong somewhere. I shewed this to a gentleman, who perhaps may be present now, Mr. Hemming, and he very properly pointed out to me that it omitted all allowance for correcting the press. [*Hear! hear!*] My friend Mr. Lindley obtained data, not exactly in this form, but pointed to the same object, from another firm of printers, whose name I am not at liberty to mention unless he tells me I may do so, but in an equally large way of business. There the item for correcting the press was inserted and was equal to the cost of composing, that is, the same sum was allowed for correcting the press as was charged for setting up the type originally. It occurred to me that that could not be right. It may be that, under the present system of unedited authorized Reports, manuscripts may find their way to the printer in such a shape as that the cost of correction would require a sum to be expended equal to the cost of composition; but that could hardly be the case with regard to any work which was superintended by careful Editors and supervised by

those who had an interest in keeping down the expense. [*Hear ! hear !*] However, in the data which I laid before the Committee I did not overlook that allowance for correcting the press, but introduced 75 per cent. of the amount. I converted Mr. Clowes' 10½d. into 11d.—in short, I added 75 per cent., or three-fourths of the amount of the original composition, for the correction of the press, and I believe from discussions which I have had with parties conversant with this matter that that is admitted to be a very ample allowance.

Now, Gentlemen, upon these data the Committee proceeded to make their calculations. With the correction made by the insertion of the item to which I have referred, the data supplied by Mr. Lindley's printer coincided with that supplied by Messrs. Clowes. They corresponded also substantially with information given to the Committee by Mr. De Longueville Giffard, who was good enough to state to us every thing that he considered could be of use with reference to those matters of detail with which he was cognizant—they coincided with his results. They coincided also, substantially, with the results that have been before the Profession in the Reports of the Law Amendment Society, published in the years 1849 and 1853. We considered ourselves, therefore, safe in acting on those data. Following those data the Report proceeds upon the assumption of allowing to the Reporters whose employment is suggested, salaries equal in the aggregate to £10,700, and it proposed that the first moiety of those salaries, £5350, should be guaranteed. The Report by way, as it appeared to me and appears still, of abundant caution, suggested that the first moiety should be guaranteed out of the Consolidated Fund or the Suitors' Fund. Individually, speaking for myself only, I have no desire whatever that such a source should be resorted to [*Hear ! hear !*] I do not think it necessary, and I doubt whether it would be granted if asked for [*Hear ! hear !*] The Committee however, proposed, in paragraph 28 of their scheme, "In case payment of the first moiety of the salaries shall not be obtained out of the Consolidated or Suitors' Fund, it shall be made a term of the contract with the publishers or printers that they shall pay such moiety by quarterly payments, and be reimbursed the same out of the proceeds of the sale of Reports as hereinafter mentioned." Omitting therefore, the proposed guarantee, the proposal was, that a printer or publisher should be found, if he could be, who would guarantee the first moiety of the Reporters' salaries upon the faith of a subscription of 2000 at five guineas a year. I understand that this has been represented as an idle and unbusinesslike suggestion, that no substantial man of business would undertake such a liability and duty, and only so late as last Friday I was challenged to produce the data upon which the Committee had proceeded. In order that

their accuracy might be further tested by one of ourselves, Mr. Westlake, whose competency to go through such a sum of arithmetic I believe you will all admit, went through the figures, and with no inconsiderable satisfaction to himself, for he had taken them on the credit of Mr. Lindley and myself, found our results were rather under-than overstated in favour of the practicability of the scheme. I was not, however, satisfied with that; but on Saturday I went over, with this Report and Scheme bodily in my hand, to Mr. Clowes at his counting-house in Duke Street, because it is better to discuss these matters in the counting-house of a man of business than in the chambers of a speculative Barrister, and, putting this document into his hand, I asked him to take it and read it and return his answer to this question which I appended: "Assuming that the Reports in each year would be comprised in eight octavo volumes of 800 pages each, in your opinion is the scheme one which, in a commercial point of view, a mere publisher or printer of sufficient capital would contract to carry into effect without any capital being supplied from any other quarter or any guarantee out of the Consolidated or Suitors' Fund being given?" The answer which he brought to me this morning was this: "I would rather not give you a speculative opinion, I will give you this. We are quite willing to undertake it on the above conditions." [*Cheers.*] Adding this, on my asking his leave to mention his name, "Certainly, but do not let it be supposed that we are tendering for such a thing, you ask me my opinion as a commercial man and as such I give it you, and I should be surprised if any printer with sufficient capital would not return you the same answer." [*Cheers.*]

Now, Gentlemen, so far as the commercial question is concerned, I venture to think that gentlemen who will pay attention to the subject, and not be led away by the notion that there must be thirty-five per cent. for publishers' commission, and that there must be large proprietors' profits to be realised—if gentlemen will dispossess their minds of those notions, they will find that the actual cost of one good set of Standard Reports, making up eight volumes per annum, can be had upon a subscription of 2000 at five guineas per annum. [*Cheers.*] A circulation of 2000 being the circulation which, before competition began, was the actual circulation of the Chancery Reports in this country. And when we consider the enormous increase, during the last forty years, of members of the Profession—when we consider the vast extent of those portions of the globe in which the British Law is administered and required to be known—when we consider the extent to which, by virtue of international copyright, British Law can be spread over the Continent, I think we are not in the clouds when we suggest that a good standard set of Reports upon a subscrip-

tion of 2000 at five guineas per annum will be self-supporting. [*Loud cheers.*]

Gentlemen, I will trouble you only with one further observation with reference to the quantity to be printed. I have assumed that eight volumes will be printed per annum. I believe in that there is an error, but an error on the side of excess, because one of the conditions of the system suggested would be, that there should be proper judgment exercised in the selection of cases to be reported, which would considerably reduce the number. There would also be proper judgment exercised in the preparation of cases, which would considerably reduce their bulk. [*Hear! hear!*] There would be no temptation to report cases simply because they have been decided in Courts of Justice. The object would be to publish cases which illustrate the Law. There would be no temptation to lengthen reports of cases by copying pleadings and extracting evidence. The object would be, to make a condensed statement of the material facts, and of the arguments, and of the judgment of the Court upon those facts and arguments. By these means, I believe, there would be very great diminution in the bulk of Reports. I do not know whether gentlemen are aware of what the number of printed volumes per annum the authorized Reports now amount to. There are about sixty parts published, or ought to be published, in the course of every year. Taking the average of these, they would make about twelve volumes. I have estimated eight, or two-thirds. In taking this amount, I have not taken an arbitrary proportion. In the paper which was laid before the Committee by Mr. Hemming, one of the most valuable papers the Committee had to consider—and I beg leave to tell him in the presence of his brethren that I do not know any man whose opinion is entitled to more weight than his—he, rather speaking of the vast quantity of useless Reports now published, intimated that the pith might be brought into a tenth part of the present bulk. I take that as a rhetorical expression, and that it means a very substantial diminution. In the paper circulated on Saturday and to-day by Mr. George Sweet, who is also eminently competent to speak to matters of detail of this nature, he suggests that the bulk might be reduced one half. I have taken one-third, and I believe in taking that proportion, I have taken an amount which, upon consideration, will be found to be liberal, as affecting the commercial element of the question; and that it is safe to assume that the quantity of printed matter will not exceed that which will go into eight printed volumes of 800 pages per annum.

Gentlemen, I have entered into these details thinking that they might be usefully stated, and because I am sure there was nothing before the Committee which the Committee would not be anxious

should be before you. They have no interest whatever in the question any more than I have. The Committee as a body and individually have no feeling in the matter beyond a desire to effect, if they can, by professional co-operation, an important change in our present system of Law Reporting which should result for the benefit of the public. [*Hear! hear!*] Personal interest they cannot have—beyond this, that you should be satisfied their recommendations have not been made without sufficient grounds for doing so, and that you have not been troubled to meet here twice until after great labour had been bestowed upon the subject; and this having been done in your service, they cannot feel (whatever the result of this meeting may be) that it has been otherwise than well expended. [*Loud cheers.*] With these observations, I move that the Report of the Committee be adopted.

Mr. DICKINSON :—I shall not trouble the meeting with any observations, but simply say that I second Mr. Daniel's motion.

The CHAIRMAN then rose to put the question.

Mr. W. M. BEST :—I wish to ask one question upon a point of order. Is this meeting a continuation of the last meeting? Is it a new meeting or an adjourned meeting?

The CHAIRMAN :—The answer which I have to give to Mr. Best's question is this, that it is, in a practical sense, a continuation of the last meeting. Technically, I thought the form of the motion carried at the last meeting made it improper for me to assume that the meeting would be disposed to treat the motion moved and seconded for the adoption of the Report at the last meeting as still pending, the form of the resolution carried, on which the adjournment took place, being, not that the further consideration of this *motion* be adjourned, but "that the further consideration of this *subject* be postponed until a day to be hereafter fixed." Therefore as a matter of form it appeared to me it would be proper there should be an independent motion made again to the meeting. That has now been made by Mr. Daniel and seconded by Mr. Dickinson. It is the same motion that was made before,—“That the Report of the Committee be adopted.”

Mr. BEST :—Then, Sir, upon that principle, as I had the honour at the last meeting to move an amendment (which I was under the impression would be submitted to this meeting) I must move it again, if you will allow me.

The CHAIRMAN :—Certainly.

Mr. BEST :—Gentlemen, I am under the necessity now of moving again the amendment which I had the honour of submitting on the last occasion, and I shall do so at less length, because I presume (perhaps improperly) that some of you heard my former observations.

There are many matters of detail into which I shall not enter; and indeed with respect to the general scheme recommended by the Committee I beg to offer no judgment, except on one portion—that which relates to the appointment of Editors. This Scheme, in Article 5, says: "The Reports shall be prepared by Reporters under the supervision of Editors." I beg to move the omission of the words "under the supervision of Editors," and to make corresponding alterations in the other rules with regard to that subject. That was the amendment which I moved on the last occasion, and which I repeat now. My objection to the supervision of Editors is this, that we are left in a state of total darkness as to what the duties of these Editors are to be. In another part of the Report we find that the Council are to determine that, and we are told that it is a matter of detail. I affirm it is nothing of the sort. It is a matter of principle. There are different kinds of Editors. Is the Editor to perform the functions of a reader of the press and to revise the authorities? If that is what is meant there cannot be a shadow of objection, except that it is proposed to give such Editor a salary of £600 a year for work which an intelligent clerk would do quite as well. But if it is meant that the Editor is to have a power of supervision and control over the Reports—that he is to have the power of striking out any case, or any portion of any case, or any expression of a Judge, or any statement that is not pleasing to himself or the powers that be—if that is to be the power to be conferred on him, I say that a more direct attack on the independence of the Reporter it is impossible to imagine. [*Cheers.*] That evil is great enough but it is not the worst. The worst is behind. But first let me observe one thing. In this country Reports are of greater importance than they are in any other, and that is one reason, among others, which makes all reference to the laws of foreign countries quite inapplicable here. On the continent of Europe a report is of no authority beyond what the Judge chooses to give it. A French Judge, for instance, not only has a right to take up the Code Napoléon, and construe it himself, and if 10,000 authorities are cited against his view, to say, "I care not for them, I put my own construction upon the Code," but the French law imperatively commands him to do this. A French Judge dares not say what an English Judge often says: "If this were *res integra* I should decide in such a way, but I am bound by authority," because the decisions of English Judges are binding upon their successors, and are part of the Common Law of England, but the decisions of French Judges are not part of the law of France. A great portion of the law of this country is in the Reports, and it has been so for 500 years. I daresay it will be upset some day, but that is not done yet; and until it is so, no legitimate comparison can be drawn between the law of France or of Germany and the Law of

England. [*Hear! hear!*] I propound nothing that is new, but stand upon what is old; when our system is proved to demonstration to be wrong, you may set it right, but under it as it stands the Reporter must be independent. Independent he cannot be if he is to have appointed over him an Editor of such a character as I have described. [*Cheers.*] The Committee, in their original Report, do not define the duties of the proposed Editors. The subject was called to their attention by myself four or five months ago at our last meeting here, but there has been no alteration in the Scheme, and not one of the Committee will tell us what the Editors are to do, whether they are to interfere with the independence of the Reporters or not. But now I come to what is the worst of all. As matters now stand, if a report is wrong, the Judge, the Profession, and the public hold somebody responsible for the mischief, and we know who is responsible, because the Reporter's name is attached to the report. But if such an Editor as I have just described is appointed, who is to be responsible? The Reporter? The Reporter would say, "I sent my report to the Editor who is placed over me, with an absolute and uncontrolled power, without appeal, of striking out what he thinks proper; I disclaim all responsibility." Then if you speak to the Editor, he would say, "My name is not to the report, I am not responsible for it, I am only a supervisor," and you would have all the evils of divided responsibility—it would be impossible to tell who was to blame, and of course there would be no such thing as real responsibility at all. I will not suggest the possibility of undue influence being brought to bear on the mind of the Reporter, but there is the double chance of its presence where there is an Editor. At present, you have only got one way of exercising undue influence, and one that I am happy to say is seldom or ever resorted to, namely, acting on the mind of the Reporter, but under the proposed system there would be two minds that might be influenced. For these reasons, at the last meeting, as now, I took the liberty of proposing to omit the words I have referred to. I do not wish to make any observations on the Scheme in general, still less to trouble the meeting with what I dwelt upon before, the plan pursued with regard to the Queen's Bench Reports—the system of mutual supervision—by which the unemployed Reporter discharges the function of an Editor—the useful function of an Editor—without danger. I explained that to the former meeting, and do not wish to go through it again. Suffice it to say, that in the regular Reports of that Court there are two Reporters. I do not claim the merit of the system for myself or my colleague,—we found it in operation, took it as we found it, and followed it. The Reporter who is not on duty acts as Editor to the Reporter who is. The Reporter who makes the report of the case sends it in type to his colleague (but those sug-

gestions are only in the shape of friendly advice), the colleague revises all the authorities and performs the function of reader of the press, and makes any suggestions in pencil that he thinks desirable, and the Reporter who made the report adopts them or not, as he sees fit. I do not say that the same thing is done with the other regular Reports, for I do not know; but it is the system which we pursue; and I took the liberty of suggesting to the last meeting that, so far as we were concerned, this proposed scheme of editorship was not only mischievous, but unnecessary. While I do not wish to say anything about the Report of the Committee in general, still less am I going to enter into Mr. Daniel's figures; but I cannot help thinking it would have been a shade better, and a little more fair, if the gentlemen composing this meeting had had some previous information given them of the figures that have been brought before us now. I have heard for the first time this calculation about my friend Mr. Charles Clark's Reports in the House of Lords. I must avow my utter incapacity, I will not say of understanding it, but of following or testing it. I think that some means ought to have been afforded the Profession at all events to test those figures about the 10*d.* and the 1*s.* 1*d.*, all I will now say is, that I suspend my belief in them. [*Laughter.*] Any gentlemen that likes to believe them to the letter, can do so, but I am sure that some fallacy in that calculation will be discovered. There is, however, one figure that I wish Mr. Daniel had given us, and which relates to a matter to which I very much regret our Chairman did not allude. At the conclusion of the last meeting Mr. Manisty made a proposal which I thought a very good one. [*A voice at the end of the hall:* "We cannot hear a word."] I am sorry that gentleman does not hear me, there is some noise. Do you hear me now, Sir? [*Great laughter.*] I can talk louder if required. [*Renewed laughter.*] I was saying, at the last meeting, as soon as the adjournment was carried, Mr. Manisty proposed that those gentlemen who were willing to subscribe to raise this sum of £5000 should have the goodness between the last meeting and the present to send in their names. I listened to Mr. Daniel's speech very anxiously to hear the result of that. [*Loud cries of "hear! hear!"*] The result is, zero. At any rate, no information has been afforded. There may be a satisfactory answer, but none has been given; and how it would be possible to set this scheme afloat without a large number of names contributing to raise the £5000, I do not understand. With that exception, I do not desire to make any further observations on the subject. [*Hear! hear!*] I am sorry to have taken up your time, but I must conclude by moving the amendment.

The CHAIRMAN:—Who seconds it? Mr. Miller seconded it before.

Mr. ALMARIC RUMSEY:—I will second it, Sir.

The CHAIRMAN :—The amendment moved and seconded is, that the words in Rule 5, "under the supervision of Editors" be omitted, and that corresponding alterations be made in the other rules.

The Hon. GEORGE DENMAN :—Mr. Attorney-General, having been most reluctantly, as far as I was concerned, placed on this Committee, and having attended a great number of its meetings, I wish to state my reasons for dissenting from the scheme which the Committee have proposed. [*Hear ! hear !*] It is not at all on the ground suggested by my learned friend Mr. Best, nor upon any ground affecting the scheme so far as the feasibility of it, in point of money, is concerned. I must candidly confess that I have not carefully gone into that part of the subject ; and so far from desiring to criticise the scheme on any such grounds as my learned friend Mr. Daniel has noticed, all the members of the Committee will bear me out when I say, that I gave the scheme every possible assistance in my power, so far as pointing out any objections to the details were concerned, in order to give my brother Committee-men an opportunity of carrying the scheme, if they could do so. My friend Mr. Daniel assents to that. So far as it is objectionable on general and broad principles, which I think it is—[*Hear ! hear !*—I will state very shortly the grounds on which I think it is objectionable. The scheme proposed by Mr. Daniel depends for its success upon a *minimum* circulation of a very large amount. I think he puts it at about 2000 copies. It must, therefore, in order to be a very successful thing, have a large circulation. This scheme must either succeed or it must fail. I conceive that the principal objection to the present system, if it be called a system, and which is very much to be dreaded is, that we are liable, every now and then, to have a break in continuity, that we are liable to have good Reports knocked on the head for the want of sufficient support, and that we are liable to have one set of Reports clash with another. No doubt, a break in Reports, which destroys the continuity of a set of Reports, is altogether very undesirable. Now, if this scheme should fail, you would of course add seriously to that sort of inconvenience, and you would introduce into the Profession, for the use of the Profession, an illusory guide which will turn out to be an evil—a fresh set of Reports, which would only live for a time, which might appear to be very flourishing, and perhaps flourishing enough to drive out of the field some other Reports exceedingly good, and you would get nothing at all good in return. That would be the case if they are not successful. On the other hand, if these Reports are to succeed, it seems to me to be assumed that they are to succeed by creating, though not a theoretical, yet an actual and practical monopoly. [*Hear ! hear !*] Now, I believe that they could only succeed by creating a virtual monopoly ; and the moment they did

succeed by creating that monopoly, being patronised and petted by the Profession, with a staff of their own to keep them up, I am quite sure the moment that scheme is once so successful as to create that practical monopoly, the Reports would very soon become practically useless. [*Hear ! hear !*] And, if they became useless on that ground then we should have a very much greater evil than we should have had if they had not been successful, we should have lost all the good Reports now in existence (and there are several), and we should have nothing in exchange but monopoly, which it would require fresh evil from competition in order to supplant, and ultimately to become as successful as those we have at present. I may be wrong, but that is the view I take; and I think that, practically, that would be the result. And that is the view which has always prevented me from feeling sanguine that we could do anything to amend such evils, if they exist. But I cannot help saying a few words as to the evils themselves. Mr. Daniel has glibly assumed that the evils are so great that it is necessary we should have some gigantic scheme, such as this Joint Stock Company of the Bar, to put an end to it. [*Mr. Daniel : Hear ! hear !*] I believe I am here speaking in the presence of an assembly consisting mainly (as they always will be in this Hall) of Chancery practitioners. Although the whole Bar may be summoned, I think this meeting consists principally of members of the Chancery Bar. [*Cries of "No ! no !" and "hear ! hear !"*] I may be wrong, but my notion is, that, if this meeting were polled, two-thirds of those present would be found to be members of the Chancery Bar. Now, I want to put it to gentlemen of the Chancery Bar to do to others as they would be done by, and to take care that they do not, by attending this meeting, impose on the whole Profession a great scheme that would be doing a mischief to the other branches of the Profession, though possibly it would be of some service to them. I believe that the two cases of the Common Law Bar and the Chancery Bar are totally different. In the cases reported in Chancery, where the law and the facts are all mixed up, and where the Judge has to deliver a long judgment, first eliminating the law and then eliminating the facts, sometimes not eliminating them at all, but mixing them up together, and giving his judgment on a mixed question of law and fact—those Reports are ten times as difficult to produce. It is ten times as difficult to make them Reports which shall present to the Profession any tangible point of law, easily accessible, and to be remembered—it is ten times as difficult as the task of the Common Law Reporters who, in a moment, can tell whether the case is likely to be one involving points of law, or whether it is a case in which the facts are all-in-all, and the facts of which they may dismiss from their attention, and have nothing to do with. That I believe is a sound

distinction; and that is one reason why I believe the members of the Chancery Bar are more anxious that there should be some change in the system than the members of the Common Law Bar. There, again, I may be mistaken; but I collect that from what I hear from members of my own branch of the Profession. - Therefore, I only wish that there should not be a hasty decision imposing upon the whole Profession an evil, when it may be that that is an evil which affects one branch of the Profession only, and produces no mischief and no evil to the other. Then I will also say this, that, as far as my testimony goes, and as far as I believe as that of the majority of the Common Law practitioners go, although there are certain Reports which are not so good as other Reports, still on the whole, whether you take the regular Reports, whether you take "The Law Journal," or any of the minor Reports, so far as mere accuracy is concerned, it is a libel on those Reports to say that any of them are really inaccurate. On the contrary they are, as a rule, most accurate, and you may with the greatest safety take any one, be it "The Weekly Reporter," be it "The Law Times," be it "The Law Journal," or be it "The Jurist," or be it the regular Reports. If you take them into your hand and look at what was the decision and what was the argument on any question decided in the Common Law Courts, you may be almost certain that that report is strictly correct. One may be fuller than the other; but they all give an accurate view of what has been decided in the cases reported. I am anxious to say that, because I believe that in the origin of the whole movement, and at the meetings which that movement has led to, a good deal of injustice was done in that respect. It was assumed that there was a great deal of inaccuracy in the Reports that did not exist. [*Cries of "No! no!" and "Yes! yes!"*] I have heard it stated myself, over and over again, and, therefore I cannot help feeling that that was an element in the question. [*No! no!*] I am glad to hear that it is not so considered now. But certainly it has been stated so very frequently, and so very loudly, that one could not help feeling that that was one of the elements that had caused the question to be raised in this manner. I have stated quite enough to justify myself in having opposed this scheme. I only wish to say one further word, and that is this, that it has been assumed by my friend, Mr. Daniel, in the pamphlet that he wrote in reply to the observations made against this proposal of the Committee, that I was sent to that Committee as representing some other persons.

Mr. DANIEL :—Oh no!

Mr. DENMAN :—I know that Mr. Daniel disavows it, for he has disavowed it to me personally; but in the pamphlet, as I read it, I was spoken of as the *representative* (that was the word I think) of those who, whether on the ground of existing interests, or some other

ground, thought the reform was not wanted, and that the existing state of things ought to be left as it is. Now that is not at all the view I take. What I say is, that the existing state of things is a state of things which is not, so far as my Common Law experience goes, one that so requires amendment as that you should impose on us anything that would be in itself an evil. I really believe that if this scheme is carried into effect, one of two results will follow, if it fails, either another abortive scheme, a break in the continuity, great annoyance to many people purchasing Reports that must destroy some good existing Reports in the struggle; or, if it succeeds, I believe, in the end, it must in its nature come to a practical monopoly—we should have all the evils of monopoly—we should have very few cases reported, which I believe to be a great evil, a very general selection of cases to be reported; and in the result we should not know what the Law was on any question on which there might be a difference of opinion when it came before the Judges. It has been assumed that it would be of great advantage to have this selection of cases. I do not agree to that. I think that one of the advantages of free trade is that we should have every case on what can be called "a point of law," reported, and that the Judges should not exercise too much discretion as to what will ultimately be the value of one case or another. [*Hear! hear!*] Some of the most valuable cases are cases that, at the time, could not have appeared to be of any importance to anybody but the parties, and those cases are now the very cases which are appealed to as enunciating great principles which are acted upon by Judges afterwards and become the foundation of solid and good Law. I believe, if Reporters and Editors were to have too much discretion in selecting cases, the public would not have half that knowledge they have at present under the Free Trade system, by which each Reporter keeps the other in check and so gets each case reported. That is my view, which is formed after deliberation, and after hearing a great many views propounded in the Committee from 400 or 500 different members of the Profession; and I may say that, in the course of the consideration of the matter by the Committee, the Committee did find objections which had never previously occurred to them, and one of the objections, which I think was felt by many members of the Committee who at first had taken a somewhat different view of the subject, was an objection to having anything like a monopoly. Certainly, the feeling of Mr. Daniel and many members of the Committee was, let us have no monopoly, because that will create idleness and carelessness, and will prevent the Profession having such good Reports as they ought to have. Gentlemen, I am sorry to have detained you so long. As regards the scheme itself, all I can say is that if it is set on foot,

though I think that will be a serious evil, I shall give it my best support, and shall at once subscribe to it.

Mr. OSBORNE MORGAN then rose to address the meeting.

The CHAIRMAN :—Perhaps it would be convenient that I should at once make a few observations on the order of proceeding. The order of proceeding, which I believe is always adopted when amendments are made to a motion, is, that the amendment first moved should be first put; because, of course, if half a dozen amendments of a different character are moved it is obvious they cannot be all put together, and we must dispose of them in the order in which they are presented. There is no objection to any Gentleman giving notice beforehand of what amendment he intends to move at the proper time and in the proper form.

Mr. OSBORNE MORGAN :—Sir, I really thought that the abstract question which Mr. Denman has so ably and eloquently discussed, namely, whether the present system of reporting was universally bad, and whether it was practicable or possible to remedy that system, was discussed and disposed of at our first meeting, and that we were now brought together merely to consider the Report of the Committee. To that Report, therefore, I propose to address myself; and it does seem to me that it is to be objected to on one or two very serious grounds. I am afraid that the objection I shall take will not be one in which my friend Mr. Best will sympathise. He objected to that part which relates to the *Editors*. I object to the part that relates to the *Reporters*. Now, I certainly understood, when we met here a year ago, that the majority of the Bar were of opinion that the present system of reporting, authorized as well as unauthorized, was so bad that it was absolutely necessary to make a radical change in it. I was not a little surprised, therefore, to find that the Committee by their 12th article proposed this, that, "The existing authorized Reporters shall have the offer of the first appointments in their respective Courts," in other words, the Committee propose to swallow at one gulp (if I may use the expression) the whole of the authorized Reporters; that is to say, so many of them as are willing to take the bait offered to them. Now, I decidedly think that that is a very bad way of beginning. I think it a great mistake; and, like a great many mistakes at the threshold, likely to prove irremediable. I think if we are to do any good with the proposed system we must do so by making these new official Reports so exceedingly good as, in effect, to annihilate competition. That I know was the view which my friend to whom we owe so very much, and whom, without meaning any offence, I might apostrophise as, "A Daniel! a second Daniel come to judgment!" When my friend first brought his scheme forward he certainly promised that he would secure such a host of reporting

luminaries that we lesser lights, like "The Law Journal," "The Weekly Reporter," and "The New Reports," would "pale our ineffectual fires," and would be quite willing to be snuffed out like so many candles in the daytime. That certainly was the proposal of my learned friend. Now, is this system which the Committee have put forward, adopting as it does the whole of the authorized Reporters, likely to attain that object? Of course, it is a very delicate matter to criticise so distinguished a body of gentlemen as the authorized Reporters, but, standing here in the interest of the Profession, I am entitled to ask this question, does the present system of authorized Reports, or does it not, satisfy the wants of the Profession? If it does, why do you want a change? If it does not, what will be gained by keeping the authorized Reporters, and merely changing their name from "*Authorized Reporters*" to "*Official Reporters*"? I know what my friend Mr. Daniel will say, "Oh, but we are going to put the authorized Reporters under the supervision of Editors." Thereupon, jumps up my friend Mr. Best, and says, "We do not want the supervision of Editors, we are not going to be supervised or superintended," and I do think, from the little experience I have had in editing, there is a great deal in what my friend Mr. Best says, for I have found out that it is a very easy thing to spoil a good report, but a very difficult thing to amend a bad one, and I quite agree that the Editors which the Committee have proposed will be an expensive, and, at the same time, a useless luxury. "Oh," (but my friend Mr. Daniel says) "we shall be able to have two or three Reporters, and one of them will pull up the other." That is proceeding entirely on a fallacy. Recollect if you want to have your Reports cheap, you can only do so by having them extensively circulated, and if you want to have them extensively circulated you must have them (and we come back to the same proposition) better by a very great degree than any other Reports. Now I wanted very much, with reference to the question of circulation, to ask a question of my friend. He has told us how much it will cost to print a certain number of books, but he has not told us one thing, and that is, what number of subscriptions have been already promised to his work. I do not want to dive into my learned friend's secrets; but if what I hear is the truth, they are about one-tenth or one-eighth of the whole number required; in fact, my friend is very much in the position of a joint stock company, who, having brought out a prospectus does not find more than one-tenth of the shares taken up. What is the obvious inference to be drawn from that? Why, simply, that the Profession generally do not feel confidence in the scheme you propose. [*Hear! hear!*] They do not feel you are in earnest, and, therefore, will not come forward to support you. But then I shall be told, "the

authorized Reporters are a necessary evil." I have been told that before by my friend. You cannot work your scheme at all unless you get rid of them, and in order to get rid of them you must give them the right of pre-emption and continue them in their places whether they are fit for it or not. I should be exceedingly sorry to say anything against the existing authorized Reporters. I repeat, it is a most invidious thing to refer at all to so distinguished a body of men—but I certainly will not vote in favour of adopting the Report of the Committee if it contains that clause. I therefore propose to move an amendment. I suppose I am not in order if I do so at once.

The CHAIRMAN :—You can read it now.

Mr. MORGAN :—I may perhaps be allowed to say I intend to move an amendment to the following effect, that the words of the 12th article, that "The existing authorized Reporters shall have the offer of the first appointments in their respective Courts," be expunged, and that in their place the following words be inserted, "The Council may, if they think fit, make arrangements with any of the existing authorized Reporters as to the terms upon which they will be willing to discontinue their Reports," and then the article will go on, "A preference may, if the Council think fit, be given to the Reporters of any publication," and so forth. I also propose to expunge the 14th paragraph; but, if you tell me that is impracticable and will not work, then I consider it so fatal a blot upon the whole Report of the Committee that I shall vote for its rejection.

Mr. JOSHUA WILLIAMS :—Mr. Chairman, I trust I may be allowed as a very humble member of the Committee to make a few observations. I intend to move an amendment which was to be seconded, and I believe will be, by one of the members of the Committee, to this effect: "That no Reports of cases can be sanctioned by this meeting which are not invested by paramount authority with the privilege of exclusive citation." It appears to me that the meeting must make its choice between exclusive citation, on the one hand, and the utmost care in reporting all decisions, on the other hand; and that between the two there is no medium course. The majority of your Committee have attempted a scheme which is a compromise—it is neither one thing nor the other. The Reports that they propose will not be "authorized Reports," in the strictest sense, because it will be competent to any member of the Bar to publish Reports in opposition to them; and if other members of the Bar compete with them, they must compete with the other members of the Bar, and the principle of competition against which we have heard so much from Mr. Daniel must again come into operation. Either you must have the principle of competition, or you must have the principle of authority—between the two there can be no choice [*Hear! hear!*] We may entertain

different opinions concerning the propriety of authorized Reports. I can imagine a Report put forward by authority which would necessarily exclude all others from the field. If exclusive citation be permitted to any set of Reports, then it is obvious that no other set of Reports can possibly be received; but if there be no privilege of exclusive citation, what is to prevent the others from still going on with the Reports which they have already commenced, and from still taking advantage of their precedence in the field? Will the authorized Reporters, as they are called, shut up their Reports and cease to publish them the moment these standard Reports come out? It is certain that the unauthorized Reporters will not do so [*Hear! hear!*] and, if that be the case, what shall we gain but one more series of Reports added to the already too great number? [*Cheers.*] I feel that, much as we are indebted to these gentlemen, much as we ought to thank them for the pains they have taken (and they have taken, as I have witnessed, great pains), they have lamentably erred in the remedy they propose. Let me warn you, before you take that remedy, of the mischiefs that I think will ensue. I fear you will find the remedy worse than the disease. In order to obtain exclusive circulation you must have either absolute authority or infallible knowledge, absolute authority to suppress any case that you do not wish to report, or infallible knowledge of all the cases that are ever decided by the Courts, and infallible knowledge of the Law to ascertain whether or not such and such a case is fit to be reported. Sir, I do not think that this Tree of Knowledge will grow in the little Paradise the Committee have promised you. There must be absolute knowledge of good or evil to reject a case, on the one hand, or to report it, on the other. If that be so, it must necessarily follow, that there can be no series of Reports deserving the attention and the patronage of a meeting like this unless such Report be sanctioned by a paramount authority; and by "paramount authority" I do not mean the authority of a Council of Reporting, for the Committee have wisely, I think, excluded from their plan the notion of exclusive citation, because if this authority were committed to a Council of the Bar you would, in fact, have the decisions of the Judges overridden by a Council of Barristers, and that I think would be improper. The authority ought to be one of a permanent kind—at least equal to the authority of the Judges, if not superior to their authority. By the authority of Parliament, it is plain that Reports after a while might be made conclusive. It might be provided, that such and such Reports and such only should be cited, and then we should have what we want, but otherwise we shall not have it. It is a mere delusion to suppose that any Reports, got up and patronized by the Bar, will, by reason of that patronage, drive others out of the field.

What are the motives which the Reporters will have. They will be infected with that official atmosphere of idleness which tends to make people careless in the discharge of their duties. Having got good places they will not be under the same inducement as other people to be careful, expeditious, and accurate in their Reports. And, not only that, but the scheme of the committee does not, as it seems to me, even take ordinary care that there should be always a Report of everything that goes on in the Courts. For, mark you, the Reporters are to be allowed to practise; and at the same time, by the 17th article, while no restriction is to be placed upon the right of the Reporter to practise, he is to be diligent and punctual in the discharge of his duties. That is as much as to say, that a man may, if he pleases, be in two places at once. If he practises he cannot be always be in the Court of which he is the Reporter; and, if not, who is to do his work? The guarantee, therefore, that there should be always somebody to report is wanting, the man cannot be in two places at the same time, and that being so, I do not see how it is possible that there should be an accurate and complete report, under this system, of everything that passes in the Courts. But, Gentlemen, if you consider it well, you will come to the conclusion that there is nothing between absolute authority on the one hand and careful means of recording every decision of the Courts on the other hand. I ventured to suggest such means; I ventured to suggest before the Committee, that every judgment of the Court should be in writing; or, if not in writing, should be committed to writing under the authority of the Court, and should be made accessible to any member of the Profession as speedily as possible. That is my opinion. That I think would obviate many of the evils to which we are now subjected, and of which we hear complaints. That would give competition fair play, which it has not under the present system, that would enable those who should, by industry and application make better reports than others, succeed in their attempt, and would give to each fair play, and would put the principle of competition, into active and successful operation. That is your choice on the one side; and, on the other, there are the authorized Reports. I will not say which of the two is the best; but this I will say, that you have nothing to do but to choose either the one or the other.

MR. T. WEBSTER:—Mr. Attorney-General and Gentlemen. I hope that the Report of the Committee will be adopted. We have had speeches from four gentlemen pointing to objections in detail, I will say a word on each of them. Let me put it to you, whether it is not, I will not say the universal, but, the concurrent opinion in the Profession that the present system is bad, and that something ought to be done? Assuming, as we do, that the present system is bad, and you

having appointed a Committee of men in whom we all have confidence (for not a word has been said, or can be said, against the selection made) who have given you a most elaborate Report, we should stultify ourselves if we did not adopt the Report. Now, Gentlemen, to take the last speaker. He says, you must have something absolute, you must have infallibility. Is that possible? Is not every thing more or less a system of compromise? Are we not endeavouring to do for the best? [*A voice* : "Best thinks not." *Laughter*.] I did not mean in that observation to refer to my friend Mr. Best. The last speaker has been heard before the Committee, the Committee have considered his suggestions and his views, and the views of others have been well considered, and I do think we ought not to set aside the Report of that Committee, or refuse to adopt it, because we cannot have perfect infallibility. I do not concur in every word of the Report. No doubt there are many matters of detail that will be altered; for instance, the amendment proposed by Mr. Morgan about arrangements with existing Reporters and to omit the word "Editors," but after all those are matters of detail in working out a large scheme. But will you, because exceptions may be taken, repudiate the Report of a Committee on which so much pains has been bestowed, the Report of a Committee appointed by yourselves, on account of objections that aim at perfect infallibility? I listened with great attention to the observations of my friend Mr. Denman, as everybody must; but I must say I differ from him entirely. I believe the mischief and evil of the Common Law Reports is infinitely greater than the Chancery Reports. [*Hear ! hear !*] Look at the set of the so-called authorized Reports in the Queen's Bench, those *best* Reports. [*Laughter*.] Look at the number of years they are in arrear. Is not one of the great objects, and the *desideratum* to be attained, to have a Report, I will not call it "authorized," but a standard Report prepared after a sufficient lapse of time to have everything carefully considered? Is not one of our great objects that we may have on the 1st of February, on the 1st of May, on the 1st of August, and on the 1st of November, all that takes place in the preceding Terms and Sittings? Will not this so-called Council, or call it what you will—will not the Committee have achieved a great thing if they shall have succeeded in procuring for the Profession an authorized standard Report, instead of that which now occupies its place, at successive periods; and then we shall not be in the state we are now of having Reports for years in arrear. [*Cheers*.] But, Sir, I have an authority to quote against my friend Mr. Denman on the question of Common Law Reports. I should perhaps have hesitated to contradict my friend if I had not had on my side the testimony of Sir James Wilde in that most wonderful address of his at York this present Session.

Could any man speak in stronger terms of the mischievous consequences of the present system of Reporting? I do say, if not the unanimous feeling of the Common Law Bar, it is a feeling that is concurred in by a very large body of the Bench and the Profession that the thing is extremely bad in itself, and that we ought to do something to remedy it. A great deal has been said about the question of competition and free trade. Nobody wishes to interfere with competition or free trade. It is very desirable that you should have an early and late Report. This system of reporting is of great importance to young men in the Profession. I would not seek to interfere with the speedy and daily Reports that appear in the Daily Papers and Weekly Reports. Those are the raw material out of which the subsequent Reports are to be made. But there is no comparison to be drawn between those Reports so produced, without time for consideration, and the well-digested and matured, I will not say selected, though I think that is a very desirable matter, but the well-matured Reports that shall come out periodically at intervals of three months, such as I think will be the case under the recommendation of the Committee. One word as to the observations of Mr. Best. I sympathise most fully with him in everything he said; but is there really anything in his suggestions as to the independence of Reporters that the Council will not deal with? You may object to the term "Editor," but the Reporter is but an Editor, and you will still have those persons who are skilful persons, like Mr. Best, to occupy the position of Reporters and Editors. Is it anything more than a name? We are seeking to get rid of a mischief and inconvenience that has been complained of by the Profession at large, and to do so in a manner that has been recommended by a Committee appointed by yourselves. I will not trespass upon your time any longer, except to notice one further observation that has been made in the course of this discussion. My friend Mr. Denman, or one of the gentlemen who have addressed you, talked of this being a great Joint Stock Company of the Bar. I am delighted to think it should be so. Is there any case in which we of the Bar could better apply the principle of co-operation which has been carried out under the Joint Stock principle than in producing the material we so much want. [*Hear! hear!*] I care not for its being called a Joint Stock Company of the Bar. I say it is the Bar co-operating to produce that which they want, not interfering with the existing state of things more than necessary, allowing free competition, free trade if you choose to call it so, although I say it is a misapplication of the term to apply it to the production of a careful book. You may apply that term strictly and properly to what is an existing thing in the market that anybody can make, but it is a misapplication of the term to apply it to a book of this kind which is

to be a well-considered, a well digested, and, to a certain extent, authorized Report of that which has taken place for some time antecedent. Upon these grounds I do trust that the Report of the Committee will be adopted. By adopting the Report we do not pledge ourselves to every word of it, but we pledge ourselves to the principle of it. No doubt the Committee will be able to work out the system which, although a difficult system, a system of compromise, is still practicable. We ought to strengthen their hands by every means in our power, believing that they will produce something which is far better than the present state of things. [*Loud cheers.*]

The CHAIRMAN :—Mr. Best wishes to explain.

Mr. BEST :—I am sorry to intrude upon you again, but as I personally and my Reports have been alluded to by Mr. Webster. [*Cries of "No ! no !"*]

Mr. WEBSTER :—I wish to say that I did not mean anything at all personal to my friend Mr. Best.

Mr. BEST :—We are told that we have been several years in arrear. [*Cries of "No ! no !" and "Divide ! divide !"*]

Mr. WEBSTER :—I was speaking of the Queen's Bench Reports.

The CHAIRMAN :—If Mr. Best will pardon me, I am quite sure that no personal reflection on him or his work was intended [*Hear ! hear !*] It would hardly be consistent with the respect that we all feel for him that he should think it necessary to occupy the time of the meeting in making any explanation [*Hear ! hear !*]

Mr. Ince and Mr. Hemming then rose together. [*There were loud cries of "Hemming ! Hemming !"*]

Mr. INCE :—Gentlemen, if you will be quiet, I will promise you not to be five minutes. Mr. Attorney-General, I simply wish to go into one part of my friend Mr. Daniel's speech, which I think has not been hitherto noticed by anybody, namely, that portion in which he gave us those statistical details. Now we all know that estimates are proverbially inaccurate ; but I can tell you, not upon estimate, but upon figures which have come from actual experience, that it will be absolutely impossible for this new series of Reports to pay their current expenses unless they have, at least, between 3400 and 3500 subscribers. This is the result of actual experience, and those are the actual figures. Now, if that is so, the question becomes clear, where are we to get all these subscribers from ? Of course such a number of subscribers cannot be got from the Bar ; you can only get them from the body of solicitors. The body of practising solicitors numbers about 9000 or 10,000. If you put the whole of your customers, in every possible way, who will favour this new system of Reporting, you will not have above 10,000 persons who can be your customers. Now, out of that 10,000 [*Loud cries of "Divide ! divide !"*]

I really think this is material. It is a question whether you are to have a new series of Reports or not, and to add to the existing system of Reports another set. Out of these 10,000 solicitors, there are not above 3000 or 4000, or 5000 at the outside, whom you can rely upon as becoming customers for Reports. What chance is there that they will give five guineas for a series of Reports when they can now get the same thing for about half the price, and when, in addition to the Reports, they can get the Statutes and a variety of other information which, put together, you could not get under another £3 or £4; and you are asking these customers to take that which will cost them £8 or £9 a year when they can get it now for less than £3 10s. These are practical reasons; and the only reason I oppose this scheme is this, that the only possible result which can happen, if the scheme be carried, is the starting of a new series of Reports which, of necessity, must speedily come to an end, and we shall have another broken series of Reports similar to that which we now have. In addition to that, you will tend to upset and to shake the stability of various series of Reports which, up to this time, have been received by the Profession and have fulfilled the object for which they have been started.

Mr. G. W. HEMMING :—I was very unwilling to say anything at all at this meeting, and I only wish to do so because of the observations made by Mr. Daniel to-day; because in the remarks in his pamphlet he has brought me into public notice in a manner that compels me to say a word or two. It does seem to me that the position of the Reporters, and especially of the authorized Reporters, has been a little misapprehended by my friend Mr. Daniel, and others. I cannot help seeing that the opinions of Reporters, whether dead or alive, are very much at a discount. It cannot be otherwise. I find in Mr. Daniel's pamphlet that reference is made to Mr. Russell, a Reporter when most of us were boys. I find him brought up to the whipping-post again in this last attack on the Reporters. I find also that even the modern Reporters, who died in harness, leaving unfinished work on hand, are not altogether spared. I think that is needless. [*Hear! hear!*] But I do not wish to pursue this point as to the exuberances of censure on the part of Mr. Daniel, because I have no doubt they all spring entirely from that fervid and rhetorical temper of mind which we all know belongs to him. I shall not fall into the opposite extreme. If I think there has been a little too much censure, I do not say that Reporters are immaculate, or that the system is immaculate. I do not say so, because, in the first place, I should despair of persuading any one of it, and secondly, because I do not at all think so myself. I think the present system is very objectionable, and I should delight in nothing so much as any really feasible scheme that could be put in the place of it. Now, what I have heard to-day from

Mr. Daniel seems to me to be material with reference to this point. If this scheme is feasible, I do not think we ought to touch the details of it, they ought to be left to the Committee; and if this scheme is really a substantial scheme, which has a solid basis, and is really likely to stand, we ought to try it; but I confess that I am not yet quite satisfied as to that. Mr. Daniel referred to me, and said, truly, that some months ago he shewed me some figures. Well, those figures led my mind to the opposite conclusion to that which Mr. Daniel has arrived at. It appears there have been some supplemental figures and those have been read by Mr. Daniel, and, no doubt, they have fully satisfied him and brought him entirely to the conclusion that he intimated, that this scheme would succeed; but I do think that before the Bar is asked to pronounce an opinion whether this is a feasible scheme or not, they ought to have the facts before them on which to form a judgment. It is idle to listen to three or four pages of figures, as those figures have been run through before us to-day, and say that we can form an opinion. It seems to me, as a matter of course, that one of two things must be done, either this Report must be adopted absolutely without inquiry, without the Bar presuming to say whether it is feasible or not, or else they must have those figures laid before them so as to enable them to judge for themselves, and, if Mr. Daniel has deceived himself in his inferences, to argue the point with him. I do not argue that point now, I only know this, that some months ago some figures were shewn to me by Mr. Daniel, which led me to one conclusion; but they have led Mr. Daniel to another. Referring to what I find in Mr. Daniel's pamphlet, I say there is an impression conveyed which I think is a mistake—there is a suggestion of this kind, that authorized Reporters are extremely well satisfied with things as they are; that they desire his scheme to fail; and that, because they desire it to fail, they predict its failing. Never was there a greater mistake than that. I do not know that we are so well satisfied. Some of us consider that we are in a position of doing a great deal of very hard work with a very moderate amount of remuneration, and no thanks. But whether we are satisfied or not, this is quite certain, that what the scheme promises is a very considerable improvement on our present position, and if I were to suspect myself of a bias at all, the only possible bias would be a bias in favour of the scheme. I have every reason to desire that this scheme should succeed, and yet I confess that, in the face of what I see, and cannot help seeing, from having been mixed up with the Reporting Body, I have very great doubts whether it can possibly succeed. [*Hear! hear!*] I am very anxious to have those figures of Mr. Daniel before me, and if they lead me to the conclusion to which they have led him, that it is a feasible scheme, I will say so candidly. [*Hear! hear!*] I think we

ought to have that opportunity. I am not one of those who agree with what has been said, at this meeting and other meetings, with reference to the right of compensation for vested interests. I do not believe in vested interests. Some people have been good enough to say we have vested interests; but I think that when Mr. Daniel mounts his chariot of Reform and drives, like Jehu or Pickford, furiously over us, and we get driven over or fall under the wheels, there is nothing for us to do but simply to pick ourselves up, pay our own doctor's bill, and say no more. I do not think it is for us to complain. But, though I am perfectly willing to be driven over for the general good, yet I do not desire to be driven over in mere wantonness. I think we ought to be convinced it is for the general good before we are driven over; and I think the whole meeting will agree with me. I think that this scheme, although it certainly, in my opinion, ought to be tried if it can be shewn to have a solid basis, yet it ought not to be tried as a mere experiment. I have no objection to be driven over, but I do not want to be made a vile body for sake of experiment. Well, Sir, if I am right in the view which I have taken of this, it leaves no difference between me and those who think with the Committee except this, how are we to ascertain whether this is a feasible scheme or not. I have pressed on the members of the Committee, as Mr. Daniel knows, many months ago, the importance of putting the financial details before the Bar that they might form their own opinion. That has not been done, and some fresh financial details are sprung upon us at the last moment. They may be sound, they may have had sufficient consideration from the Committee, though certainly they do not form the basis on which the Report was arrived at—they may justify this matter *ex post facto*. But whether they do so or not is a question that appears to me to be one which I do not think the Committee would desire to have left entirely to themselves, and that for two reasons. I do not think it is usual for the Report of a mere majority of a Committee to be put forward without the reasons which are supposed to recommend it or the evidence on which it is based. I may be wrong; but I do not remember ever meeting with such a case. If the Committee had been all but unanimous in their Report, I could quite understand they should come to this meeting and say, "You have confidence in us," (and we must feel that, we must all have confidence in the Committee, for we are certain that no better Committee could have been chosen.) You have appointed us your Committee, we have come unanimously to this conclusion, accept it on the faith which you have in us." That would be reasonable enough; but for a majority to come and say, we are members of a dissentient Committee, we ask you to adopt a scheme which may or may not be feasible, which two only out of the fourteen seem

to have examined and considered to be a practicable scheme—when they come forward with a scheme like that, I do not think they can say, "Here is this project, we think it feasible upon the whole, no doubt it will interfere very considerably with the interests of this man, and that man, but adopt it at once." Then, as to the interests of those affected by it. As I have already said, if I had any bias, it would be in favour of the scheme, for it promises, as far as the Court with which I am connected is concerned, an income, I think, of £800 or £1000 a year, and I can assure the Committee and this meeting that the Court in which I practise never, since Vice-Chancellor Wood presided over it, and long before, produced anything like that amount. Therefore, all our interest bears in favour of the scheme. No doubt we are interested in it in this way, to prevent, if possible, the scheme from being attempted and proving a failure. No doubt it would injure us if it failed; but would it not injure the Bar too? Just consider what would be the effect of this scheme failing. Suppose you start it, for the first year a large number of men will subscribe £5, some would go on and subscribe £5 a second year, some would lose £5, and some £10—that would not be much; but during all this time, the present evil that is so much complained of, the multiplicity of Reports, will be much aggravated, while the very object of the whole movement, namely to reduce the number and thereby to reduce the cost to those who buy them, will be defeated, you will aggravate the evil, and, besides that, you will stop the way. Nothing else can be done till this scheme is disposed of. Therefore, I say, by all means let it be ascertained, with certainty, whether it is a solid scheme, or not, and let the Bar have the opportunity of considering, on paper, these figures. [*Loud cries of "Divide! Divide!"*]

MR. EDWARD WEBSTER:—I have had the honour of receiving from the Committee a copy of this Report, and, therefore, I have a right to address this meeting although I have retired from practice at the Bar under circumstances the more fully and generally known the better. None of the speakers hitherto have raised a question of principle. It is now my intention, by the motion I am going to read to you to raise a question of principle. In my judgment, the Bar is about to make a very great mistake in this matter, and I believe I am able to say that I am the only person in this room capable of forming an entirely independent opinion [*Loud laughter*], because the price of the Reports is a matter of utter indifference to me [*Renewed laughter*], and I fear very much that the Bar is, on the present occasion, guided, to a very great extent, by contemplating pecuniary advantages which, in truth, will never be realized. [*Hear! hear!*] I object to the constitution of the Council, because it is a voluntary Council, an unpaid Council. [*Cries of "Divide! Divide!"*] And you cannot by any possibility

prevent the Legislature interfering on the subject of the Reports. I therefore move, "That in the opinion of this meeting it is expedient that Law Reporting and Law Reports be brought by Government to the notice of the Legislature with a view to their Amendment." That, Gentlemen, is the only real remedy for the present evils of Law Reporting; and, in the event, which I fully anticipate, that the Bar is exposing itself, on the present occasion, to the imputation of being actuated by a commercial principle, and if, in addition to that, your scheme should fail in reducing the number of Reports, why then you will have come forward on a most important question, not confined to the Bar, but affecting the welfare of the public, and you will then have failed. I therefore move this resolution for the purpose of raising this question—whether it is not expedient, having regard to the welfare of the Bar and the public, that the Government should take up this measure; and if, on the present occasion, the Bar were to affirm that a declaratory code is the only mode of remedying the evil, and Reporters were appointed to conduct the Reports with a view to that code, then you would have a real remedy and one worthy of the Profession. The remedy which is now proposed is not one that is worthy of the learning, the sagacity, or the foresight of the Bar.

Mr. HEMMING:—Sir, I do not know whether I am in order; but in consequence of a misunderstanding, I omitted to read the amendment that I intended to propose. I do not know at what time I should read it.

The CHAIRMAN:—Read it now—we will put it in due course to the meeting.

Mr. HEMMING:—My amendment is, "That the Committee be requested to circulate among the Bar the financial data on which their scheme is based and the result of the appeals made for subscriptions." [*Hear ! hear !*] Then I propose to add this, "And any other information in their possession which, in their opinion, would assist the Bar in forming an opinion on the principle and feasibility of the project."

The CHAIRMAN:—I believe it will be the wish of the meeting that these different propositions should be considered with as much regularity as possible. I would first put the first amendment to the original motion. The original motion is, "That the Report of the Committee be adopted. The amendment moved by Mr. Best was, "That the words in Rule 5 'That the Reports shall be prepared by Reporters under the supervision of Editors' be omitted and that corresponding alterations be made in any other Rules relating to the same subject." I may as well state what will be the effect of adopting or rejecting that motion. If it is adopted, it will still be competent for any other gentleman to move amendments. If it be rejected, it will still be competent for other amendments to be submitted. Is it the

pleasure of the meeting that the amendment which I have just read should be carried?

A show of hands was then taken, very few being held up in favour of the amendment.

The CHAIRMAN :—I declare the amendment lost. The next amendment moved was Mr. Morgan's, to omit from clause 12 the words, "The existing authorized Reporters shall have the offer of the first appointments in their respective Courts," substituting for them the words, "That the Council may make arrangements with any of the existing authorized Reporters as to the terms on which they may be willing to discontinue their Reports," and to omit clause 14.

A show of hands was then taken.

The CHAIRMAN :—I declare that amendment lost. The next amendment moved was by Mr. Joshua Williams, "That no Reports of cases can be sanctioned by this meeting which are not invested, by paramount authority, with the privilege of exclusive citation."

A show of hands was taken, and the amendment declared to be lost.

The CHAIRMAN :—The next amendment was that moved by Mr. Hemming, "That the Committee be requested to circulate among the Bar the financial data upon which their scheme is based, and the result of the appeal made for subscriptions, and any other information in their possession which, in their opinion, would assist the Bar in forming an opinion on the principle and feasibility of the project; and that in the meantime this meeting be adjourned until a day to be fixed by the Attorney-General.

[A show of hands was then taken for and against the amendment.]

The CHAIRMAN :—I do not think I can decide this by show of hands. I must ask the Bar to divide. Those who are in favour of Mr. Hemming's amendment will go to the right of the Chair, and those who are against it to the left.

A division was then taken.

The CHAIRMAN :—The result of the division is: For Mr. Hemming's amendment, 111; Against it, 126. The amendment is lost. [*Loud cheers.*] The only remaining amendment is that moved by Mr. Edward Webster, "That in the opinion of this meeting it is expedient that the Law Reporting and Law Reports be brought by Government to the notice of the Legislature."

Mr. SIDNEY SMITH :—I do not think that amendment was seconded.

The CHAIRMAN :—We have not gone through that form with the others.

Mr. ALMARIC RUMSEY :—If it has not been seconded, I will second it.

The amendment was then put to a show of hands, and declared to be lost.

The CHAIRMAN :—I have now to put the original resolution : "That the Report of the Committee be adopted."

A show of hands was then taken.

The CHAIRMAN :—I think the resolution is carried. [*Cries of "No ! no !"* and "*Divide ! divide !*"] If any gentleman wishes it, the meeting can divide. [*Loud cries of "No ! no !"*]

[A second show of hands was taken, when there was a considerable majority in favour of the resolution.]

The CHAIRMAN :—The resolution is clearly carried. [*Loud cheers.*]

Mr. DANIEL :—The Report of the Committee having been now adopted, the resolution prepared by Mr. Amphlett, and which would have been moved by him but for his absence, is in these terms : "That the Attorney-General be requested, as President of this meeting, to communicate the resolution adopting the Report to the Lord Chancellor, the Master of the Rolls, the Benchers of the several Inns of Courts, the Society of Serjeants' Inn, and the Council of the Incorporated Law Society, with a request, on behalf of the meeting, that they severally will be pleased to further the objects of the scheme. One word with reference to a question Mr. Hemming put to me. At the last meeting, Mr. Manisty, not a member of the Committee, said, at the close of the proceedings of the last meeting, "I would make this suggestion—that those who are prepared by November to accept the invitation to pay five guineas annually, should send in a note to that effect." He was not a member of the Committee, nor was such a suggestion satisfactory to the Committee. But Mr. Amphlett, as Chairman, thought it due to Mr. Manisty and to the meeting, who appeared to sanction his suggestion, that that opportunity should be afforded. The objection of the Committee was this : an objection which they have found repeated over and over again by members of the Bar and Solicitors, namely, that until this meeting had had the fullest opportunity of considering the question whether the Report should be adopted or not, it was premature, and it was not becoming, to forestall the judgment of the Bar by invitations. [*Hear ! hear !*] I am in a position to tell you that from solicitors in every quarter of England we have received invitations sanctioning the course which the Committee have taken, and expressing ardent hopes that the result will be successful. [*Cries of "The number."*] Something under 300. [*A laugh.*] Could it be expected to be otherwise ?

The resolution having been seconded, was then put to the meeting and carried *nem. con.*

Mr. DENMAN :—I beg to move a vote of thanks to the Chairman for the impartial manner in which he has conducted the proceedings of this meeting.

Mr. DANIEL :—I beg to second that motion.

[The resolution was carried unanimously, amid loud cheers.]

The CHAIRMAN :—I am obliged to you. Of course, on this occasion, I did not care here to express any opinions of my own, but only, as far as I could, to assist you in your deliberations.

Mr. ELDEBTON :—I think it is due to the Committee that the thanks of the Bar should be given to them for the great trouble they have bestowed on the investigation of this matter, and the pains they have taken in eliciting opinions from every quarter.

The resolution having been seconded, was carried unanimously.

The proceedings terminated at five minutes to 6 o'clock.

The meeting thus ended satisfactorily, so far, at least, as to shew the Committee that their labours had not been altogether in vain. But, judging from the tenor of the personal remarks made by the most prominent speakers at the meeting in opposition to the scheme, amounting almost to an attack on me, and desiring to stand well with the Profession from the highest to the humblest, it appeared manifest to me that it would fall to my lot and become my duty to take a very active part in superintending and directing the delicate and difficult proceedings which would be required to be taken in order to ensure the Bar Scheme being brought into such a practical shape that ultimate success might be reasonably expected. I am, therefore, anxious at the outset to explain and make clear, for reasons which will be obvious, under what circumstances and by what means the firm of William Clowes & Sons were introduced and became known to me. In my first letter to Sir Roundell Palmer, then Solicitor-General, dated the 12th of September, 1863, I had suggested as the first step to be taken in furtherance of the scheme which I had propounded as a remedy, that a meeting of the Bar should be called by the Attorney-General to consider the question of the existing evils of the system of Law Reporting with a view to the adoption of some remedy. Sir Roundell was not then the Attorney-General, but he became so in October upon the sudden death of Sir William Atherton, and on the 13th November I commenced the correspondence which ultimately led to the Bar meeting of the 2nd of December, as already stated. When my *brochure* of the 18th of May was first circulated, the late Mr. Henry Warwick Cole, Q.C. (who afterwards became County Court Judge for

Birmingham), was one of the most zealous supporters of the notions I had in that paper thrown out for ventilation among the Bar; and he wrote and addressed to me a letter of which the following is a copy:—

3, New Square, Lincoln's Inn,
17th November, 1863.

MY DEAR DANIEL,

One great point to be attended to before any meeting is held on the subject of Law Reporting, and to be then explained, is the financial part of the question. I am very anxious to see your project carried out practically, and I have conversed on the subject with an old friend of mine, Mr. Geo. Clowes, the eminent printer (of the firm of Wm. Clowes & Sons), and I believe that he may be able to remove any difficulties that may be raised against your plan on financial grounds, and the objection that would be felt by the Bar to anything like commercial risk. I have, therefore, given him this letter of introduction to you in order that you may, if you wish, have the opportunity of furnishing yourself with a definite scheme that can be practically effected.

Yours very truly,

HENRY W. COLE.

W. T. S. Daniel, Esq., Q.C.

A few days after the 17th of November this letter was brought to me, at my chambers in Lincoln's Inn, by the gentleman named in it—Mr. George Clowes—who up to that time was an entire stranger to me. We had a long conversation together, in which I explained fully to him my views, but intimated that I thought it was premature to consider the financial question in the present state of things; he quite agreed with me and left his card, which I have retained. It is simply the card of a private gentleman, "Mr. George Clowes, Duke Street, Stamford Street." I had no further interview or other communication with Mr. Clowes or any member of his firm until, in the following year, receiving the introduction through Mr. Cole, I obtained from him the figures mentioned by me at the meeting on the 28th of November, and on the morning of that day received from him the answer to the question read to the meeting; and then all communication between Mr. Clowes and myself ended, I never had any with his firm or any other member of it, and it was not renewed until the Council formed under the Bar Scheme put themselves through me

into communication with Mr. Clowes' firm of William Clowes & Sons under the circumstances which will be stated in the Fourth Division of this work, which will detail the proceedings of the Council formed under the Bar Scheme up to the complete establishment of "THE LAW REPORTS" on the 2nd of November, 1865.

I will now add some incidents connected with the meeting which I think will be read with interest, and be at the same time agreeable reminiscences to those who were present at the meeting and still survive. The Attorney-General had no difficulty in disposing of the first three amendments by show of hands, but upon Mr. Hemming's amendment being put he felt a difficulty, and required that a division be taken—the supporters of the amendment to go to the right of the chair and the opponents to the left. Mr. Hemming undertook to be his own teller; Mr. Thomas Webster, Q.C., volunteered to be teller for the opponents. The hall was furnished with benches placed at right angles to the walls on each side, and so placed, left a gangway or passage, the length of the hall, between the benches. The respective parties, supporters and opponents, having divided, Mr. Hemming proceed to count his supporters one by one, each one as told passing to his rear. Mr. Webster arranged the opponents in the benches, and seating them found that each bench would hold ten, he quickly filled twelve benches with ten on each bench and had six on the thirteenth, and in less than two minutes he handed the number, 126, to the Attorney-General. Mr. Hemming had not half got through his counting. I took no part and remained seated on the raised platform by the side of the Attorney-General; but he, appearing surprised at the quickness of Webster's return, turned to me as though he would have asked a question. I then directed his attention to the benches, where he could see twelve benches with ten on each and six beyond, and thus was able to verify for himself the correctness of Webster's return. It then transpired (what I was not aware of) that several of the leaders who intended to support the scheme and would oppose the amendment were in the bencher's room apart from the hall, and as soon as they heard a division was being taken they rushed in and tendered their votes in opposition to the amendment. I think they were five or six, if not more; but the

Attorney-General refused their votes as they were too late. This interlude created some amusement, as they were all of them leaders. I remember among them Mr. Malins, Mr. Selwyn, Sir Hugh Cairns, and I think Mr. Hobhouse and Mr. Osborne Morgan, and two or three others whom I forget. They, however, remained to render useful service afterwards. An amusing and good humoured excitement was going on while Mr. Hemming was with great care counting his supporters, and having at length finished he handed his figures to the Attorney-General. They showed 111, against 126, and the Attorney-General declared the amendment lost. I then requested the Attorney-General to put the original motion, namely, that the scheme of the Bar Committee be adopted. This was done by show of hands. The members after the voting on Mr. Hemming's amendment had left their seats and formed one mass in the hall. Upon the show of hands the Attorney-General seemed to hesitate; but those now present who were too late for the former division claimed and were allowed the right to vote in this division, and the Attorney-General then decided that there was a clear majority in favour of the motion. All further opposition was withdrawn, and, on the motion being finally put, there was no hand held up against it; and it may therefore be recorded, in the spirit of a recent memorable example, that a scheme, which had been gallantly but unsuccessfully opposed, was, when further opposition was withdrawn, in this instance because fruitless, adopted *nem. con.* To be dealt with successfully hereafter as events will shew. *Oh! sic omnia!*

I will venture upon only one further remark in connection with this meeting. It is this. If Mr. Hemming's amendment had been carried there would have been an end of the Bar Scheme. The Committee had taken the very best means in their power to test as a commercial question the financial soundness of the scheme, assuming that the requisite number of subscribers should come forward. These particulars were fully stated by me in my address to the meeting, and their accuracy was not questioned by Mr. Hemming; to obtain the particulars asked for by his amendment would have been a reflection on the Committee to which I am satisfied not one of their number would have submitted; and

the scheme would thus have become, what during the autumn those unjust detractors, of whom I have spoken, ventured to represent it—a *fiasco*! And mark how lamentable would have been the consequences, and how irreparable! The public and the Profession would never have realised the benefit which they have now for twenty years enjoyed from the learning, the skill, the ability, and the unflagging energy with which Mr. Hemming has discharged his duties as Editor of the Equity Series of "THE LAW REPORTS."

"There's a Divinity that shapes our ends, rough-hew them how we will," truly says Shakspeare; and, as Love's Labour has not been Lost, All's Well that Ends Well. Thus ends the Third Division.

But before proceeding with the *Fourth* I will add, by way of contrast to the writers to whom I have referred, leading articles on the subject of the last meeting which appeared in "The Times," "The Daily News," and "The Daily Telegraph" of the 30th of November, 1864, and I also add an article from a provincial paper of note in the district, "The Derby Reporter" of December 30, 1864. All these representatives of the press deal with the question generously and in a liberal spirit, and do not descend to the imputation of any unworthy motive in anybody.

From "The Times," Nov. 30, 1864.

THE reform of Law Reporting may not be a very attractive subject to the public in general, but it is one which nearly concerns their interests. The recording of judicial decisions is virtually the manufacture of law, for a case once enshrined in a recognised Report, unless reversed by a superior Court, or explained away by collation with some other Report, governs the rights of her Majesty's subjects for the future. The method therefore, in which such a work is to be conducted ought not to be treated as a merely professional question. Legal practitioners, of course, desire to have authentic Reports, which can be quoted in Court, and are not too confused for purposes of legal reference. But they are by no means unanimous in their wish to eliminate from Reports cases which prove nothing, to reduce their bulk, or even to diminish their expense, for brevity and simplicity are to the thoroughbred lawyer what infinitesimal doses are to the apothecary. This consideration may serve to throw light on some of the difficulties which the Committee on Law Reporting have had

to encounter. Had the improvement of our jurisprudence been the paramount object of the Bar, had no vested interests intervened, and had the impartial opinion of the Judges been solicited, we cannot doubt that greater progress would have been made. As it is, a compromise which does not go to the root of the evil has been proposed, and carried by a narrow majority of those who attended the meeting in Lincoln's-Inn Hall. Whether it can be effected depends on the consent of many different bodies, and whether, if effected, it would be preferable to the existing system depends on a great variety of conditions. Before we state its main features, however, it may be well to point out exactly what it professes to remedy, and in explaining this to our readers we cannot deviate too widely from the received style of a modern Law Report.

Every one knows that the so-called "unwritten law" of this country is contained in a series of published Reports, that these Reports purport to be short historical summaries of lawsuits, of the material facts brought out in evidence, of the points raised by counsel, and of the judgments pronounced by the Court on those points. Most people know that of these Reports a large proportion are worthless, since they merely exhibit the application of a familiar principle to a familiar set of circumstances; that others are, in some respects, worse than worthless, since they give colour to doctrines afterwards rejected as unsound; and that almost all are encumbered with superfluities of pleading, judicial doubts, *obiter dicta* of questionable relevance, and loose materials for which a text-book is the proper place. Such being the character of the *soi-disant* "regular" Reports, it must now be added that they frequently appear at most irregular intervals, omit cases which really deserve notice, and cost more than they would be worth if they were perfectly authoritative. On the other hand, so far from being authoritative, they have to struggle against competition on all sides, and are sometimes confessedly inferior to those composed for legal periodicals. The result of this is, as Sir James Wilde remarked on a recent occasion, that the oracles of our law have to be gathered, as it were, from leaves scattered in wild disorder up and down some thousand volumes, and, moreover, that several discordant versions of the same oracle have to be collected at a great expense and compared with each other. Now, let us consider, first, what expedient an unlearned person would suggest to cure this anomaly, and let us next see whether, having regard to the objections alleged by the learned, that expedient be practicable; after which we shall be in a position to appreciate the scheme adopted by the meeting.

The course that naturally occurs to the uninitiated is to provide for the production, at stated periods, of succinct Reports, containing

nothing immaterial, and carefully corrected by the Judges themselves. If the Judges could be induced to deliver written judgments on all important cases, so much the better, and the labour of the Reporter would then be limited to the preparation of such an introduction as would render the *ratio decidendi* intelligible. How concise this might be the great example of the Year Books is sufficient to prove, and those cases which were not thought to be worth written judgments would not, for the most part, be worth reporting as *judicial precedents*. With or without the safeguard of written judgments, reports edited, expurgated, and corrected under the immediate authority of the Courts would command a general circulation among lawyers, and would be fitted to become the permanent repository of our case law. So, at least, any one unembarrassed with legal experience would suppose, and, as he would probably regard this as the grand desideratum, he might be tempted to overlook obstacles of detail. These, however, we must examine, for to the lawyer they are far more formidable than obstacles of principle. It is urged that any such reporting must be "official," and that, by extinguishing competition, it would strike at the "independence" of Reporters. No doubt it would be official, if by "official" reporting be meant reporting under a sense of public responsibility and not at private risk. But is this a reason for condemning it? Is there the least doubt that a report of this kind would be more valuable and trustworthy than any which we now possess, and that it would encourage greater precision and condensation of statement on the Bench itself? For, if there be not, this is a strong *prima facie* ground for introducing it. But would it extinguish competition after all? It has been said by Mr. Joshua Williams and others that authority and monopoly are here inseparable from each other; in other words, that no report can be conclusive which is not exclusive of all others. This is far from self-evident. Cases are reported with more objects than one, and the strict precautions which should be observed in stereotyping the law may be discarded in supplying information to the public, or even to the legal profession. The advocate might still borrow illustrations from unofficial sources, though he were prohibited from referring to them as binding authorities, and no Reports worthy to be quoted without appeal could keep pace with all the requirements of daily practice. The inquiries of the sub-committee into the practice of foreign countries shew that in France, Norway and Sweden, Denmark and Italy, authentic minutes of judicial proceedings are registered, in a more or less convenient form, by a public officer, while in the Supreme Court of the United States there are official reporters. Perhaps some fault might be found with every one of these systems, but it does not

follow that they are not, one and all, superior to our own, or that anything whatever is gained by the mere absence of Reports on which we can absolutely rely. Let the urgent want of them be once established, and the best mode of appointing and paying Reporters will soon be settled.

The plan recommended by the Committee embodies the idea of *quasi*-official Reports, but it places the compilation of them under the control of a council of barristers, and does not aim at impressing them with any higher sanction. In fact it is a proposal to establish a large joint-stock company for the publication of Reports which are to supersede all others, being prepared by a highly-paid staff under the management of a representative Board, "upon the principle of rejecting all cases useless as precedents," and with such assistance as the Judges and counsel engaged in each suit can be induced to give. By offering to the present authorized Reporters the option of the first appointments under the new *régime* it is hoped that its natural opponents may be conciliated, and by allowing the new Reporters to practise so long as they discharge their duties efficiently it is expected that greater legal attainments may be secured by the Council. The estimated annual charge for salaries is about £10,000, and to meet this it is intended that the entire set of Reports shall be furnished to subscribers at £5, from the proceeds of which subscription must also be deducted the cost of printing. Some advance, in the first instance, from the Suits' or Consolidated Fund is contemplated by the Committee. With this exception the scheme is a very fair, though not very promising, commercial speculation,—the benefit to the shareholders being represented by the supply of a good article at a cheap rate,—but it is no more. The new series may or may not displace the existing authorized Reports, and it may or may not be more skilfully weeded; but it does not profess to fulfil the conditions of a genuine Year Book. Unless the Judges consent to recognise it as authoritative, and to make it so by revising it personally and treating citations from it as decisive, it will be of little advantage to anybody. No power can compel them to do so but that of Parliament, and neither the Judges nor Parliament are likely to look favourably on the assumption of such functions by a voluntary association. If official reporting is to be introduced, it must be introduced directly and not by a side wind, with the strongest guarantees for accuracy, and with less regard to the convenience of barristers than to the interests of future litigants and the consolidation of the law. The Bar have a perfect right to supply their own wants in their own way, but if those of the public are to be consulted—always supposing some radical change to be necessary—it will be very difficult to exclude what the Committee term "Government patronage and control."

(From "*The Daily News*," Nov. 30, 1864.)

A MEETING of the English Bar is an event so rare, if not quite unprecedented, that the fact that one had been summoned by the Attorney-General, acting upon a requisition very numerously signed by his brethren, would deserve, whatever its purpose, a note of comment. But the object for which such a meeting is to be held on Wednesday next is in truth of a public quite as much as of a professional nature. It is the consideration of the present system of reporting the decisions of the Courts, those decisions by which the Common Law is ascertained, and the intentions of the Legislature are interpreted and applied. That judgments of which this is the purport and effect should with the utmost accuracy, brevity and speed be noted and published, is obviously a matter of imperial concern. It involves very greatly the perfecting and simplifying of the law, as well as the primary effect of making the law known to the public. Certainty in the rules by which all the affairs of life are governed is of the first necessity; it alone protects us against wrong and delivers us from the curse of litigation; it takes precedence even of the improvement of the law, for law can scarcely be amended till it is ascertained, and the Legislature is properly chary of interposing enactments which may prove to be either superfluous or ill considered. So, as the opinions of Judges on what the law is, form not only the foundation on which it at present rests, but of every change which may be made in the structure, it is impossible to exaggerate the importance of having them recorded in the most careful and complete manner possible. And in this view, first of all, we congratulate the Bar on the step it is about to take. The evils and inconveniences of the present system of reporting may press primarily and heavily upon it, and we shall briefly glance at these before we leave the subject. But it is also the depository of a function of great public moment; it is the body most competent to give the advice in the matter best calculated for the public weal, and it therefore assumes a duty and position to which it is well entitled in meeting to take the whole question into consideration. We may, indeed, in some degree also congratulate ourselves on this fact. We have urged before now that the English Bar is a body which by credit, influence, and learning is qualified to take a more decided lead in the amelioration of the institutions under which we live. It has hitherto been the fate of that body to have its opinions and wishes represented in public only by those individual members who, for their own personal ends, have obtained seats in Parliament. But as these gentlemen have already attained eminence in the practice of the law as it is, and the further advancement they look for is the reward of party devotion, they

cannot be expected eagerly to initiate, or even heartily to support, measures of general legal improvement. What one suggests the others naturally carp at, Government bills are certain to have holes picked in them by all the opposition lawyers, and individual crotchet or private interest is thus made to regulate the apparent course of the Bar in reference to all suggested reforms. We believe that this does it great injustice, as it certainly does the country much injury. We believe that the collective opinion of the Bar would be found in England, if fairly tested, to be, as the opinion of the Profession has been found in other countries, in favour of the abandonment of useless forms and exploded fictions, and on the side of large and liberal legal reform. And we cannot over-estimate the benefit to the country from the adhesion of the Profession to that course, and from the careful and friendly consideration by it of the measures which may be suggested for carrying into effect the adaptation of law to modern ideas and requirements. Many legal abuses, in spite of the inertia of the Profession, have been of late years swept away. But many still remain, which, we cannot doubt, would speedily disappear before the free discussion of an independent Bar, enlightening, leading, and aiding public opinion. Therefore, we rejoice at this first appearance of a desire in the Profession to take up so honourable and useful a position. What it now does will serve as a precedent and, we hope, as an encouragement to the like treatment of cognate questions.

The point to be considered on Wednesday may, indeed be said to have compelled this effort towards its solution through the influence of something like despair. The Reports of decisions already, as the Lord Chancellor told the House of Lords, amount to nearly 1200 volumes, and every year sees an addition of some two dozen more. Every Court has its quasi-authorized Reporter, but Free Trade has long ago asserted its powers in this matter as in everything else. The authorized Reporters were sometimes careless or dilatory; a rival would anticipate or correct them, or supply their omissions; and the Judges felt they could not shut out the light by refusing to listen to what was reported by a barrister equally qualified with the semi-official note-taker. So the field being thus opened, we have now about half-a-dozen series of current Reports of each Court, and the same reasons which brought these into being compel their purchase and use. Here, in the first place, is a very great and useless pecuniary expense, and a very great waste of time and labour in perusing them; but these are the least of the evils they cause. Reports of the same case may honestly differ, as each Reporter differently estimates the importance of the several circumstances of which it is made up. This disagreement raises one of the most puzzling questions which can perplex a Court, and it need not be said that when a Court is perplexed the law

must be considered unsettled, and no barrister can advise his clients with confidence. The rivalry amongst the several series leads to great prolixity, for each fears to omit facts which, however unimportant, may appear in another book, and lead to its being preferred. And this prolixity is a necessary source of doubt and confusion in the law, for it places immaterial facts on the same footing with those which are material, and renders the extracting of any general rule from the decision almost an impossibility. Lastly, the evils react upon each other, for as it is not every one who goes to law with an honest purpose, nor every lawyer who desires only an honest result, a discrepancy between two reports of a hostile precedent is eagerly sought out to invalidate it, and a report full of minute details is preferred, because in some of the particulars there may be found a distinction between the precedent and the case to which it is to be applied. Thus the demand is sufficient to support an objectionable system in one series, and the system inevitably spreads and infects the whole.

What may be the appropriate remedy for this crying evil is a difficult question, the answer to which we shall not presume to anticipate. Mr. Daniel, Q.C., who has taken the chief initiative in the present movement of reform, has published a pamphlet in which he advocates the appointment of absolutely official Reporters in each Court, with the observance of an absolute rule that no other Reports shall be cited. We doubt the possibility of enforcing such a rule, and experience seems against it. But we shall await with interest the opinion which the Bar may express upon the proposal, or the suggestion of substitutes for it. So many of its members are concerned in the business or trade of reporting, in addition to the constant use which all make of the Reports, that it is peculiarly competent to inform us of the difficulties and prospects of success in any scheme which may be offered. But the other branches of the legal profession, as well as the public, have also a stake in the discussion, and we shall therefore be glad to learn what the Bar has to say.

(From "*The Daily Telegraph*," Nov. 30, 1864.)

No very large share of public attention will have been attracted to the subject discussed in the Hall of Lincoln's Inn on Monday. The conclusion will be generally adopted that the world at large has no concern with so technical and dry a topic as Law Reporting, and that the lawyers may well be left to settle their grievances among themselves. Nay, more, there will probably be persons hard-hearted enough to rejoice in the discovery that lawyers do suffer under grievances—that the troublers of mankind are themselves in trouble. This short and summary method of disposing of the subject involves, however, a

considerable amount of error. Bad law-reporting means uncertain law ; and we all know the mischief of that. The City merchant who has quarrelled with his partner, the country gentleman who has a refractory tenant, the parson who is engaged in a parochial controversy, can all understand that if the law were perfectly clear their difficulties would never have arisen, or might be easily adjusted. It is uncertainty as to their civil rights and obligations which occasions the majority of litigious disputes, and nine-tenths of the litigants would never dream of "going to law" if the response of that oracle could be clearly known beforehand. Therefore the debate of Monday last concerns everybody who is liable to be involved in a suit or action—that is to say, almost all her Majesty's subjects.

The lawyers now complain, as the rest of mankind have been complaining for centuries, that our code has grown too voluminous to be within the power of human comprehension. The inability of laymen to master the vast science is an evil with which we have long been familiar ; but it is somewhat startling to hear that it has outgrown the grasp of the learned profession itself. A fine legal fiction imputes to every individual a complete and accurate knowledge of the whole mass of jurisprudence, and forbids any person to escape obligations by pleading ignorance of them. We now find, not only that the maxim is not true, but that it is the exact opposite of truth. Instead of everybody knowing the law, nobody knows it. The Chancery barrister studies equity, the special pleader the mysteries of pleading, the conveyancer the mysteries of titles and assurances, the criminal practitioner the penal code ; but not one of these men pretends to be versed in the business of the others, or even to have a complete acquaintance with his own. How is this? The answer is, that law has developed and propagated itself with such amazing fecundity that the most assiduous industry cannot trace all its ramifications. Its growth is prodigious, like that of the aquatic weed which in some of our eastern counties has choked up rivers and converted navigable streams into stagnant morasses. The manufactories of law are numerous and their activity unwearied. First, there is the statute-book—the net result of the public labours of Parliament year after year. The volumes in which the general resolutions of the great council of the nation are annually recorded constitute a vast and ponderous series ; but even this mass is insignificant in comparison with the "judge-made law," the code of juridical decisions. We have six Chancery courts, three Common Law Courts, and several Courts of Appeal, besides other tribunals, sitting day by day during a great part of the year ; and all these seats of justice contribute to swell the mighty flood of English jurisprudence. Every one of their decisions constitutes a precedent which, so long as it is not overruled, binds

Courts of co-ordinate jurisdiction in analogous cases. Of course, many of the judgments contain no new principles, and are therefore omitted from the published legal Reports. But, notwithstanding these omissions, the multitude of reported cases is far too great. Decisions which merely re-affirm settled points, and really contribute nothing to the stock of legal knowledge are incorporated in these technical publications. Another complaint is, as the law-publishers pay the Reporters according to the length of their contributions, the latter have an inevitable tendency to amplification and the insertion of impertinent matter. Nor are these the only evils. There are rival series of Reports, and thus it happens that the same decision is reported several times over; and as neither of the versions is strictly authentic, discrepancies between them occasion much trouble both to the Bench and the Bar.

We repeat that this subject, technical though it be, is one of public interest. It is as important for us that lawyers should have good reports as that surgeons should possess good instruments. Litigation is not much less painful than surgery, and no argument is needed to prove that humanity gains by the keenness and exquisite ingenuity of vivisection. Moreover, the lawyers themselves, even though they are the natural enemies of the human race, deserves some little pity. They complain that their grievance is intolerable; that the tax upon their brains which the fecundity of the law imposes is greater than they can bear; and not only is the complaint reasonable, but it so far affects the public interest that we may entertain a legitimate desire to see the evil abated. The most hopeful scheme for this purpose appears to be that of entrusting the management and supervision of the Reports to some central and impartial authority, instead of leaving it, as at present, entirely in the hands of the law publishers. It may be reasonably assumed that a committee appointed by the Judges and great legal bodies would regard the intrinsic excellence of the Reports as more important than their mercantile success; whereas the book-sellers must regard the subject almost exclusively in the commercial aspect. The common objection to the proposed scheme is that it savours of monopoly; but the principle of free trade, like all other good principles, may be used inappropriately. It has been happily remarked by an eminent authority on this subject, Mr. George Sweet, that the question is "not how to secure the most abundant and the cheapest supply of a commodity, but how to obtain one single article for a specific service in the best and most convenient form." From the conflict of opinion at the Lincoln's Inn meeting, however, it is easy to see that the scheme of a superintending council is at present in a very crude state. A multitude of questions arise as to the functions and powers of this body. Shall the publications accredited

by it possess exclusive authority, and alone be cited before the Judges; or shall rival publications be tolerated? Shall compensation be allowed to the displaced Law Reporters? How are the necessary expenses of the authorized publication to be guaranteed? These and many other questions warmly discussed by the Bar are matters of detail, and their importance, though great, is not absolutely vital. The main principle to be established is that of a competent, disinterested supervision of the Reports. When once that point shall be thoroughly settled, it appears to us a vast stride will have been taken towards effecting the much-needed reform.

[From the *Derby Reporter* of Dec. 30, 1864.]

At the first blush there are few subjects more uninviting to the provincial journalist or to his readers than that of Law Reporting. And yet, when we take into consideration the vast number of the public who necessarily are compelled to resort to our Courts of Law and Equity, it is manifest that a correct report of the decisions of those Courts, by which the interests of future litigants are bound, is of paramount importance. To exemplify this more clearly; first of all, we have our Acts of Parliament, the *lex scripta* of the land, which, being printed at the expense of the nation and by the authority of Parliament, her Majesty's lieges are bound to obey. But there is also the *lex non scripta*, the unwritten law, composed as it is of the decisions of our Judges, and which, as we have intimated, are precedents and binding on future litigants, but which have hitherto been published in the most unsatisfactory manner.

We are led to make these observations on the perusal of two very able letters addressed by Mr. Daniel, Q.C., to her Majesty's Attorney-General on the present system of Law Reporting with its attendant evils, and a scheme recommended by the Committee appointed by the Bar for the remedy of them. It affords us pleasure to refer to these able letters, not only on account of their intrinsic merit, but because we have the honour of knowing Mr. Daniel, who was formerly a member of the Midland Circuit, but who long since retired from it to practise, as we hope, in the more lucrative branch of the Profession at the Chancery Bar. * * * *

The evils of the system of Law Reporting to which Mr. Daniel's first letter applies, are those which consist in the preparation and publication of the Reports which, from the authority attached to them as precedents, are considered as "the evidence of the unwritten law." It is beside our purpose to go into the abtruse details, so fully propounded in the letters before us; but we may briefly refer to the present system and its apparent evils. Mr. Daniel points out that

the present system of Law Reporting is founded upon the notion that it is the proper subject of commercial enterprise, and may be conducted upon the principles of Free Trade, with this proviso, that the Reports be prepared and published under the name of a barrister. These Reports, Mr. Daniel shews, are divided into the authorized or privileged reports, and the unauthorized or competitive Reports. He states that this nomenclature has become singularly inaccurate—that whereas the *authorized* Reports have been published at most irregular intervals, and sometimes with a discontinuance of the series, the *unauthorized* Reports have been published very regularly, their regularity being the essence of their commercial success, which would be a virtue if authority, quality, and cost were commensurate; in fact, as we make it out, Mr. Daniel would have the best of the unauthorized Reports improved in quality and published by authority. Now it would seem that the present system of authorized Reports involves upon the legal profession and the public a dilatory and incomplete article at a very high cost; whilst, on the other hand, the unauthorized Reports, of which there are about six or seven publications rivalling each other in the eager race for competition, produce quantity and not quality, or in other words, the publication of cases valueless in themselves as precedents, and which afford but a scanty remuneration to Reporters and publishers.

When we revert to the fact already mentioned, that Acts of Parliament are printed by authority, is it not apparent that the judicial decisions of our Courts should be published at the cheapest rate, but with equal authority, and the best article for money's worth? It were, perhaps, to be desired that Government would undertake the publication of an authorized edition of the judicial decisions of our Courts; but this seems out of the question. The result, however, of Mr. Daniel's labours has been that, at two meetings under the presidency of the Attorney-General, the Bar of England have denounced the evils of the present system, and have adopted a comprehensive plan for their remedy. The scheme of the Committee is now before the Judges and the Inns of Court for their consideration, and the legal profession as well as the public generally will look forward with interest to the result. It is not within our province to enter into the details of the remedies suggested, suffice it to say that the scheme recommended by the Committee and adopted by the Bar is set out as an appendix to Mr. Daniel's second letter.

The proprietors of the unauthorized Reports, and others, object to Mr. Daniel's theory, on the ground that he would create a monopoly subversive to the interests of Free Trade. We cannot altogether indorse Mr. Daniel's political opinions as enunciated by him a few years since, but we believe him to be a thorough Free Trader on

principle, and with reference to the subject now under consideration he argues in reply to the oppositionists that monopoly and free trade have nothing to do with the question. He says, and we are in entire agreement with him:—

A strong argument against the propriety of permitting Law Reporting to be an object of commerce may be deduced from the results. The principles of Free Trade, when properly applied by individual enterprise to a legitimate object of commerce, never fail, after a fair trial, to produce as a result, either increase in the quantity or improvement in the quality of the article to be consumed without increase of cost; or an article of consumption equal in quantity or quality, or both, at a reduced cost. But if there be neither increase in quantity nor improvement in quality, nor reduction in cost, then are we not justified in concluding that the principles of Free Trade have been abused by an attempt to apply them to an object to which they are not properly applicable? Now the result of the experience of the last thirty years, in the application of the principles of free trade, through individual enterprise, to Law Reporting as an object of commerce, has been by an increase in quantity to deteriorate the articles to be consumed, and at the same time to increase the cost; to produce results the very opposite of those which the principles of free trade, when applied to an object to which they are properly applicable, never fail to secure.

Cordially reciprocating as we do these principles of free trade, we could wish that some other of Mr. Daniel's political opinions were more in unison with our own; nevertheless we should be glad to see him occupy a seat in the new Parliament, where, as an independent member, he might by his ability, industry, and eloquence, enunciate those doctrines of political science to which he has evidently given the most careful consideration. Be this, however, as it may, should Mr. Daniel's efforts in this important matter of Law Reporting be crowned with success, and should Lord Westbury's great scheme for consolidating all the Courts of Law and Equity in a Palace of Justice contiguous to the Inns of Court be carried, then to these two equity lawyers will be willingly awarded the praise due to their valuable and disinterested exertions.

FOURTH DIVISION.

The steps taken after the 28th of November, 1864, and up to the 2nd of November, 1865, the day on which "The Law Reports" were commenced.

IN pursuance of the resolution passed at the meeting of the Bar on the 28th of November, 1864, the Attorney-General (Sir Roundell Palmer) communicated the resolution adopting the Report to the Lord Chancellor, the Law Lords, Her Majesty's Judges of the Courts of Law and Equity, the Benchers of the several Inns of Court, the Society of Serjeants' Inn, and the Council of the Incorporated Law Society, with a request that they severally would be pleased to further the objects of the Scheme.

During the year 1864 Sir Roundell Palmer was Treasurer of Lincoln's Inn. An adjourned meeting of the Council of the Benchers of the Inn was held on the 14th of December, 1864, at which twenty-six Benchers, including Lord St. Leonards, were present; the Attorney-General, as Treasurer, presiding. The minutes of the Council contain the following entry:—

"The Treasurer made a communication to this Council on the subject of Law Reporting to the following effect. At a meeting of the Bar held in Lincoln's Inn Hall, on the 2nd of December, 1863, it was resolved:—1st. That the present system of preparing, editing, and publishing Reports of judicial decisions in this country requires amendment. 2nd. That a Committee (then named) should be appointed to prepare a plan for the amendment of the present system of preparing, editing, and publishing Reports of judicial decisions, and report thereon at a future meeting. The Committee appointed under these resolutions met and considered the subject referred to them, and on the 14th of June last made their Report. At a subsequent meeting of the Bar, held in Lincoln's Inn Hall (by adjournment from the 1st of July last), on the 28th of November, it was resolved:—(1.) That the Report of the Committee be adopted. (2.) That the Attorney-General be requested, as President of the meeting,

"to communicate the resolution adopting the Report to the Lord Chancellor, the Benchers of the several Inns of Court, the Society of Serjeants' Inn, and the Council of the Incorporated Law Society, with a request, on behalf of the meeting, that they severally will be pleased to further the objects of the Scheme. In compliance with the latter resolution the Report and the resolution adopting it are now communicated to the Benchers of this Society, and, on behalf of the Gentlemen of the Bar who passed the resolution the Treasurer expresses their hope that the Benchers may be pleased to approve and further the object of the Scheme embodied in the Report. Mr. Amphlett gave notice that he would make a motion in this matter at the Council to be held on the first day of Hilary Term, 1865, and the consideration of the Treasurer's communication was postponed to the same Council."

Sir Roundell Palmer's year of office as Treasurer expired before the first day of Hilary Term, 1865, and he was succeeded in the Treasurership by Mr. Loftus Tottenham Wigram, Q.C.

On the 11th of January, 1864, the first day of Hilary Term, Mr. Amphlett, as Chairman of the Bar Committee, moved as follows:—

- 1st. That this Society is willing to concur with the other Inns of Court in giving the guarantee mentioned in the 4th rule of the Scheme recommended by the Committee in their Report, and, in the event of the other Inns of Court so concurring, to appoint two members of the Council proposed by the first rule of the Scheme.
- 2nd. In the event of the above resolution being adopted; that such resolution be communicated to each of the other Inns of Court with a request that they be so kind as to communicate to this Society their own intentions on the subject, and that in the meantime the further consideration of the matter by this Society be adjourned.

The motion gave rise to an animated discussion, in which Lord St. Leonards took the leading part. His Lordship deprecated the scheme as one involving trading arrangements,—namely the necessity of appointing a manager, and agents to canvass for subscribers and collect subscriptions, thereby incurring the risk

of bad debts and necessitating the hiring a shop or office for business.

In answer to these objections it was pointed out to his Lordship by Mr. Amphlett that the Scheme was to be supported by subscriptions paid in advance, and that therefore none of the difficulties pointed out would arise. Thereupon Lord St. Leonards replied that he did not believe that subscribers would pay in advance, and that the whole Scheme would prove an abortion, and he should be sorry to see the Society have anything to do with it. There were several supporters of the Scheme present, among them were the Attorney-General, V.C. Wood, Sir FitzRoy Kelly, Mr. Selwyn, and myself—there were others present, who, if not opponents, were not supporters of the Scheme. But the Council broke up before any resolution was come to, and the further discussion necessarily stood over to the next adjourned Council, which would probably not be held until the middle of February. However, the day after the Council, Lord St. Leonards wrote to the Treasurer stating that when he urged his objection to the Scheme he was not aware that it had been approved at a meeting of the Bar, called and presided over by the Attorney-General; and he desired therefore to withdraw all his objections, and leave the matter to be dealt with by the Benchers without any further opposition on his part.

Upon the receipt of this communication the Treasurer called a special Council to be held on the 16th of January, 1865, for the express purpose of dealing with the Attorney-General's communication, and Mr. Amphlett's motion. The Council was held accordingly, and was attended by twenty-two members of the Bench. But Lord St. Leonards did not attend, and after full discussion the result arrived at is thus entered on the minutes:—

Upon taking into consideration the communication made to this society by the Attorney-General on the subject of Law Reporting, and on motion on the same subject by Richard Paul Amphlett, Esq.,—Resolved, that this Society is willing to concur with the other Inns of Court in giving the guarantee mentioned in the fourth rule of the Scheme recommended by the Committee in their Report, and, in the event of the other Inns so concurring, to appoint two

members of the Council proposed by the first rule of the scheme.

Ordered that this resolution be communicated to each of the other Inns of Court, with a request that they will be so kind as to communicate to this Society their own intention on the subject, and that in the meantime the further consideration of the matter by this Society be adjourned.

This resolution was duly communicated to the other Inns of Court—the Inner Temple, the Middle Temple, Gray's Inn and Serjeants' Inn—and, in addition, to the Incorporated Law Society—

The Middle Temple, at a Parliament holden on the 20th day of January, 1865—

Resolved that this Society is willing to concur with the other Inns of Court in giving the guarantee mentioned in the 4th rule of the Scheme recommended by the Committee in the Report, and, in the event of the other Inns so concurring, to appoint two members of the Council as proposed by the 1st rule of the Scheme,

Ordered that this resolution be communicated to each of the other Inns of Court, with a request that they will be so kind as to communicate to the Society their own intentions on the subject, and that in the meantime the further consideration of the matter by this Society be adjourned.

Gray's Inn made the following communication to Lincoln's Inn:—

At a Pension held the 25th day of January, 1865, upon taking into consideration (pursuant to adjournment) the communication made to this Society by the Attorney-General on the subject of Law Reporting, and also upon reading and considering the resolutions of the Honourable Societies of Lincoln's Inn and the Middle Temple respectively upon the subject—It is resolved, That this Society regrets that they have not sufficient confidence in the Scheme to induce them to join in it. Ordered that this resolution be communicated to each of the other Inns of Court.

At the Inner Temple on Friday, the 27th of January, 1865, resolutions were passed in identically the same terms as those passed by the Middle Temple on the 20th of January, and which were identical with those of Lincoln's Inn.

At a meeting of the Council of Lincoln's Inn held on the 31st of January, 1865, the following proceedings took place as recorded on the minutes:—

Read the communications received from the other Inns of Court on the subject of Law Reporting, viz., resolution of the Honourable Society of the Middle Temple, dated the 20th of January instant, resolution passed by the Honourable Society of Gray's Inn on the 25th January, and resolution of the Honourable Society of the Inner Temple, dated 27th of January.

Resolved 1: That while regretting the determination of Gray's Inn not to join in the Scheme this Society is willing to concur with the Inner Temple and Middle Temple alone in giving the guarantee mentioned in the 4th rule of the Scheme—each of the three Societies guaranteeing two-sevenths of the £500 per annum, and to nominate two members of the Council proposed by the 1st rule.

2. That at the adjourned Council to be held on Wednesday the 15th day of February next this Society elect two members of the Council under rule 1.

Ordered that these resolutions be communicated to the other Inns of Court and Serjeants' Inn and the Incorporated Law Society.

Resolutions in similar terms were shortly afterwards passed by the Inner Temple and the Middle Temple, and duly communicated to Lincoln's Inn.

On the 15th of February, 1865, at a Council of the Benchers of Lincoln's Inn, the following was entered on the minutes:—

"Ordered that Sir FitzRoy Kelly and William Thomas Shave Daniel, Esq., be appointed members of the Council on Law Reporting pursuant to rule 1 of the Scheme of Reporting recommended by the Committee.

"Ordered that this appointment be communicated to the other

Inns of Court, and to Serjeants' Inn, and to the Incorporated Law Society."

On the 16th of February, 1865, the Inner Temple appointed William Forsyth, Esq., Q.C., and George Markham Giffard, Esq., Q.C., to be members of the Council on Law Reporting in the same terms as Lincoln's Inn.

At a meeting of the Incorporated Law Society held on the same 16th day of February the following resolution was passed.

Resolved, Mr. William Strickland Cookson and Mr. William Williams be appointed by the Incorporated Law Society members of the Council to be formed for the management and control of the Reports recommended by the Committee appointed at the meeting of the Bar held in Lincoln's Inn Hall on the 2nd of December, 1863, pursuant to rule 1 of the Scheme of Reporting recommended by the Committee.

2. That this resolution be communicated to the Lord Chancellor, the Inns of Court, Serjeants' Inn, and the Attorney-General."

And at a Parliament of the Middle Temple holden on the 22nd of February 1865, Thomas Webbe Greene, Esq., Q.C., and John Burgess Karslake, Esq., Q.C., were appointed members of the Council on Law Reporting in terms similar to the appointment made by Lincoln's Inn and the Inner Temple respectively, and afterwards at a Parliament held on the 2st of April, 1865, the Middle Temple agreed to join in the guarantee mentioned in the 4th rule of the Scheme to the extent of two-sevenths of the £500, the limit there mentioned.

After the resolutions passed by the Societies of Lincoln's Inn and the Inner Temple had been communicated to the Incorporated Law Society, and their resolution, appointing Mr. Cookson and Mr. Williams as their representative members of the Council on Law Reporting, had been communicated to and acknowledged by Lincoln's Inn, the Incorporated Law Society, through Mr. Williams, at that time their Vice-President, by a letter addressed to the Attorney-General, intimated their wish to join in the guarantee to be given in pursuance of the 4th rule of the Scheme, and with that view Mr. Williams, with the sanction of the Attorney-General, had an interview with me upon the subject

and received from me all necessary explanations, and afterwards, on the 25th of February, addressed to me a letter of which the following is a copy and which is entered on the minutes of the Council :—

SIR,

I communicated to the Council of this Society (the Incorporated Law Society of the United Kingdom) at their meeting on the 24th inst., the result of the interview which I had with you after the date of my letter of the 17th inst. addressed to the Attorney-General, and I have now the honour to acquaint you that the Council consider that as it is proposed that the members of their body should, together with members of the several Inns of Court, constitute the Council of Management of Law Reporting, it is only just and proper that the Council of this Society should guarantee a suitable proportion of the office and other expenses of the undertaking. I have therefore, on behalf of the Council of this Society, to state that this Society will concur with the Inns of Court in guaranteeing the payment of the office and other expenses of the Council of Law Reporting, in the same proportion as the several Inns of Court who may be represented by two members in the intended Council of Law for Law Reporting.

In giving this guarantee, the Council of this Society understand, from the explanation which I was enabled to furnish after my conversation with you, that the amount for which this Society will become liable will not exceed £150 per annum, and that the continuance of the guarantee will be brought before the Council of this Society, as well as the guaranteeing Inns of Court, for reconsideration, at a period not later than two years from the present date.

I am, Sir,

Your obedient servant,

WILLIAM WILLIAMS,
Vice-President.

W. T. S. Daniel, Esq., Q.C.

The Attorney-General (Sir R. Palmer), the Solicitor-General (Sir R. P. Collier), and the Queen's Advocate (Sir Robert Phillimore), gave their assent to act as *ex-officio* members of the Council.

The first meeting of the Council as now formed was held at the chambers of Sir FitzRoy Kelly on the 25th day of February, 1865, and the following is a copy of the minutes as entered :—

"First meeting, held at the chambers of Sir FitzRoy Kelly, on the 25th day of February, 1865.

"Letters convening the meeting were addressed by Mr. Daniel to the Attorney-General, the Solicitor-General, the Queen's Advocate, and the other members of the Council.

"*Present* :—

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| Sir FitzRoy Kelly. | Mr. Giffard. |
| Mr. Daniel. | Mr. Greene. |
| Mr. Forsyth. | Mr. Cookson. |

"Read letters from the Solicitor-General and Mr. William Williams stating their inability to be present at the meeting.

"Read letter from the Vice-President of the Incorporated Law Society, dated the 25th of February, 1865, in reference to the Society's offer of guaranteeing the payment of the office and other expenses of the Council for Law Reporting, in the same proportion as the several Inns of Court represented by two members on the Council.

"Ordered, That the offer be accepted.

"Resolved,—

"That Sir FitzRoy Kelly be appointed permanent Chairman of the Council ;

"That Mr. Daniel be appointed permanent Vice-Chairman ;

"That at all meetings three shall form a quorum, and the Chairman presiding shall have a casting vote ;

"That Mr. James Thomas Hopwood be appointed Secretary, *pro tem.* The salary of the Secretary to be fixed by the Council hereafter ;

"That the Secretary shall summon all meetings by circular addressed to the *ex-officio* and other members of the Council.

"The Chairman alone, or the Vice-Chairman together with any other member, may call a meeting of the Council.

"The notice of any meeting shall state the object.

"Ordered, that the draft preliminary address to the Profession prepared by Mr. Daniel, be printed and sent to each member of the Council for consideration."

The next meeting of the Council was held on the 4th of March. Sir FitzRoy Kelly was not present, and I took the chair. The draft Report was then submitted for consideration, but before entering on that subject Mr. Karslake raised a preliminary objec-

tion to the competency of the Council to do any act in its quasi-corporate character, on the ground that the council contemplated by the Bar Scheme was to comprise one member each from Gray's Inn and Serjeants' Inn, and Gray's Inn had declined to send a member, and Serjeants' Inn had made no communication upon the subject, and the Council was, therefore, not formed. The objection raised by Mr. Karlake, as it afterwards appeared, was not concurred in by any other member of the Council nor by either of the *ex-officio* members, but I suggested that, as, if the objection prevailed it would be destructive of the Bar Scheme, it should be entered on the minutes, and the question of its validity be adjourned to a Council to be specially summoned for and held on the following Monday—the 6th of March. This was agreed to. The meeting was held: I was again in the chair. And the entry on the minutes is as follows:—

"An address prepared by the Vice-Chairman was taken into consideration. Mr. Karlake raised the objection that by the resolution of the Middle Temple, under which he and Mr. Greene were appointed members of the Council of Law Reporting, it was contemplated that they would be members of a council constituted in pursuance of the first clause of the Scheme of the Bar Committee, and that, as the societies of Gray's Inn and Serjeants' Inn had not appointed members of the Council, there was no properly constituted Council which could act, and therefore the address could not be issued as coming from that body."

The respect that was due to Mr. Karlake, and the responsibility that was cast upon me as Vice-Chairman, made it my duty, as I conceived, at once to communicate with the Chairman, Sir FitzRoy Kelly, and I so informed Mr. Karlake, and he agreed to meet me at Sir FitzRoy's chambers in the afternoon on the 4th of March (Saturday), if an appointment for that purpose could be made. An appointment was made, and we met. Sir FitzRoy at once treated the objection as untenable. He said that the appointments made by the three Inns of Court and the Incorporated Law Society had been made with a full knowledge that Gray's Inn refused to concur, and had stated the ground of its refusal, and that Serjeants' Inn had not taken any notice of the communication, the reason being well understood to be that the Judges

desired to be absolutely independent, and it would stultify the Bar Committee to yield to the objection. Mr. Karslake nevertheless adhered to his objection ; and I requested Sir FitzRoy to attend the meeting on Monday and take the chair, but he stated he could not possibly do so, as his engagements in Court would prevent him. The meeting on the 6th of March was duly held. Both Mr. Karslake and Mr. Greene were present. Mr. Karslake's objection was still earnestly insisted upon by him, but his colleague, Mr. Greene, did not concur ; and to prevent the collapse of the Bar Scheme, and without coming to a decision upon the objection, it was suggested, I believe by Mr. Greene, that perhaps Mr. Karslake's difficulty would be removed if the address were issued by Sir FitzRoy Kelly as a preliminary address, and that no reference be made to the Council being duly constituted. This was assented to by the meeting, though not by Mr. Karslake, and it was arranged that the address should be altered accordingly, and taken into consideration at the next meeting, which was appointed to be held on the following Saturday, the 11th of March. This meeting was held accordingly, and after reading a letter from Mr. George Markham Giffard, dated the 11th of March, approving the address as altered, and a letter from Mr. Karslake, addressed to Mr. Greene, stating his disapproval of the address as amended, it was resolved that the preliminary address and circular as settled and amended be adopted. Ordered : that 5000 copies be printed and issued under the superintendence of the Vice-Chairman and Mr. Cookson. A further number were afterwards printed and issued, amounting altogether to 14,000.

The following is a copy of the address :—

LAW REPORTING.

PRELIMINARY ADDRESS.

At a meeting of the Bar held in Lincoln's Inn Hall on the 2nd of December, 1863, convened by the Attorney-General Sir Roundell Palmer, Knight, M.P., in pursuance of a requisition signed by 380 practising Members of the Bar, and presided over by him, it was resolved, *That the present system of preparing, editing and publishing Reports of judicial decisions in this country requires amendment.* At the same meeting a Committee was appointed to prepare a plan of

amendment, to be submitted to a future meeting of the Bar, for their consideration. The Committee consisted of the under-mentioned Barristers, namely,

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| Sir R. P. COLLIER, Knt., M.P., Solicitor-General. | The Hon. GEORGE DENMAN, Q.C., M.P. |
| Sir ROBT. PHILLIMORE, Knt., Queen's Advocate. | GEORGE MELLISH, Esq., Q.C. |
| Sir FITZROY KELLY, Knt., Q.C., M.P. | JAMES DICKINSON, Esq. |
| W. T. S. DANIEL, Esq., Q.C. | JOSHUA WILLIAMS, Esq. |
| MONTAGUE E. SMITH, Esq., Q.C. | GEORGE SWEET, Esq. |
| M.P., now one of Her Majesty's Justices of the Common Pleas. | ALEX. PULLING, Esq., now Mr. Serjeant PULLING. |
| C. JASPER SELWYN, Esq., Q.C., M.P. | GEORGE DRUCE, Esq. |
| Sir HUGH M. CAIRNS, Q.C., M.P. | G. W. HASTINGS, Esq. |
| R. PAUL AMPHLETT, Esq., Q.C. | HENRY MATTHEWS, Esq. |
| | NATH. LINDLEY, Esq. |
| | J. R. QUAIN, Esq. |
| | ALFRED WILLS, Esq. |
| | JOHN WESTLAKE, Esq. |
| F. VAUGHAN HAWKINS, Esq. | |

The Committee made their Report on the 14th of June, 1864, recommending a scheme containing a plan of amendment. The Report was signed by the undermentioned members of the Committee:—

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|---|--------------------------|
| R. PAUL AMPHLETT, Esq., Q.C., Chairman of the Committee. | Mr. Serjeant PULLING. |
| Sir ROBT. PHILLIMORE, Knt., Queen's Advocate. | JAMES DICKINSON, Esq. |
| Sir FITZROY KELLY, Knt., Q.C., M.P. | GEORGE DRUCE, Esq. |
| W. T. S. DANIEL, Esq., Q.C. | G. W. HASTINGS, Esq. |
| C. JASPER SELWYN, Esq., Q.C., M.P. | N. LINDLEY, Esq. |
| Sir HUGH M. CAIRNS, Knt., Q.C., M.P. | J. R. QUAIN, Esq. |
| | ALFRED WILLS, Esq. |
| | JOHN WESTLAKE, Esq. |
| | F. VAUGHAN HAWKINS, Esq. |

A meeting of the Bar was held in Lincoln's Inn Hall, under the presidency of Sir Roundell Palmer, as Attorney-General, on the 1st of July, 1864, to receive and consider the Report. This meeting, after some discussion, was adjourned until November, in order that in the meantime the Report and Scheme might be fully considered by the Bar.

By the Scheme it was proposed that a set of Reports in the Superior Courts of Law and Equity and the Appellate Courts should be prepared and published under the management of a Council, to be appointed as follows:—two by Lincoln's Inn; two by the Inner Temple; two by the Middle Temple; one by Gray's Inn; one by Serjeants' Inn; two by the Incorporated Law Society, and in a certain event which may not arise, two by the Lord Chancellor.

The Scheme also proposed that the ATTORNEY-GENERAL, the SOLICITOR-GENERAL, and the QUEEN'S ADVOCATE for the time being should be *ex-officio* members of the Council.

On the 28th of November, 1864, a further meeting of the Bar was held, under the presidency of Sir Roundell Palmer, as Attorney-General, when the Report, having been considered, was adopted.

In Hilary Term, 1865, the Report and Scheme were submitted to the several Inns of Court, Serjeants' Inn, and the Incorporated Law Society for their consideration; and the Benchers of Lincoln's Inn, the Inner Temple and Middle Temple, and the Incorporated Law Society, have recently appointed members of the Council, in conformity with the Scheme.

Gray's Inn has declined, and *Serjeants' Inn* has not at present decided to appoint members of the Council.

The *ex-officio* members are—

THE ATTORNEY-GENERAL, SIR ROUNDALL PALMER, KT., M.P.
THE SOLICITOR-GENERAL, SIR ROBERT P. COLLIER, KT., M.P.
THE QUEEN'S ADVOCATE, SIR ROBERT PHILLIMORE, KNT.

The elected members are—

| | | |
|---|---|--------------------------------------|
| SIR FITZROY KELLY, KNT., M.P., Q.C. | } | <i>Lincoln's Inn.</i> |
| W. T. S. DANIEL, ESQ., Q.C. | | |
| WILLIAM FORSYTH, ESQ., Q.C., | } | <i>Inner Temple.</i> |
| GEORGE MARKHAM GIFFARD, ESQ., Q.C. | | |
| T. W. GREENE, ESQ., Q.C. | } | <i>Middle Temple.</i> |
| J. B. KAESLAKE, ESQ., Q.C. | | |
| W. S. COOKSON, ESQ. (Firm—Clayton, Cookson & Wainewright), 6, New Square, Lincoln's Inn. | } | <i>Incorporated Law Society.</i> |
| WILLIAM WILLIAMS, ESQ., Vice-Presi- dent of the Incorporated Law Society (Firm—Currie & Williams), Lincoln's Inn Fields. | | |
| | | |

It is now proposed to invite the assistance and co-operation of the several branches of the Profession, for the purpose of accomplishing the object involved in the resolutions of the Bar.

There are published at the present time SIX independent sets of Reports :

- | | |
|-------------------------|---------------------------|
| 1. The Regular Reports. | 4. "The Law Times." |
| 2. "The Law Journal." | 5. "The Weekly Reporter." |
| 3. "The Jurist." | 6. "The New Reports." |

The present cost of all these Reports is about £50 per annum.; the cost of the regular Reports alone is about £30 per annum. The multiplicity of the Reports, apart from the cost, occasions the evils of which the Profession complain. The remedy proposed is—the establishment, under the management and control of the Profession, of ONE SET OF STANDARD REPORTS upon the basis of a fair regard for existing interests. One complete set of Reports, prepared with the requisite learning, skill and care, and published with expedition, regularity, and at moderate cost, is all that is required for *citation as authority*.

It needs, surely, no argument to prove how deeply the interests of the public are concerned in the certainty of the Law; or how important it is, that the Judge who decides, the Counsel who advises, and the Solicitor under whose guidance the client acts, should all be regulated by one and the same standard of authority. If the Legal Profession in its several branches co-operate for the purpose, such a set of Reports may be obtained, and their continuance secured under public professional control.

The proposed Reports would be divided into Three Series:—

1. Appellate—comprising the House of Lords and Privy Council;
2. Chancery—including Bankruptcy Appeals and Lunacy;
3. Common Law—including the Probate, Matrimonial, Admiralty and Ecclesiastical Courts.

The Common Law and Equity Reports respectively would be published in monthly parts, and the Appellate Reports as often as should be found convenient, but so *that the decisions of the year in all the Courts may, as far as practicable, be published within the year*. The Reports would be prepared by Reporters under the supervision of Editors to be appointed by the Council, and approved by the chief or presiding Judge of each Court. The proceeds of the Reports, after payment of the expenses of printing, sale, distribution and management, would be applied towards the liberal remuneration of the Editors and Reporters; the principle of the proposed application of the proceeds of the Reports being this, that, as the moneys are raised from

the Profession for public professional requirements, their application shall be confined to public professional objects.

The proposed Subscription, payable in advance, is as follows:—

| | £ | s. | d. |
|--|---|----|----|
| <i>For the Entire Series</i> | 5 | 5 | 0 |
| <i>For the Appellate Series</i> | 2 | 2 | 0 |
| <i>For the Chancery Series</i> | 3 | 3 | 0 |
| <i>For the Common Law Series</i> | 3 | 3 | 0 |

The price will be one-third more to Non-Subscribers.

Arrangements have been made for the reception of the names of those who may be willing to become subscribers to a set of Reports to be established with the above objects; but in order that this may be done, it is requisite that 2000 subscribers for the entire series, or a subscription of £10,500 per annum at the least, should be obtained.

The question of the establishment of the proposed set of Standard Reports is one entirely for the Profession to determine, and to their determination it is now submitted.

Forms of Subscription will be circulated, and it is hoped that future proceedings may be decided upon not later than the last day of Trinity Term, the 15th of June next.

In the event of subscriptions to a sufficient amount being received, endeavours will be made to arrange that the Reports commence as from the first day of Michaelmas Term next.

Names of subscribers will be received and recorded by JAMES THOMAS HOPWOOD, of No. 3, New Square, Lincoln's Inn, Esq., Secretary *pro tem*.

FITZROY KELLY.

BENCHERS' READING ROOM, LINCOLN'S INN,
11th March, 1865.

The Scheme having escaped being suffocated by what at best was excessive care on the part of its nurses, the question had to be considered how could the interval between the 11th of March and the 15th of June (the period mentioned in the circular) be most usefully employed. Much was left to my discretion; and my first object was if possible to secure the co-operation and assistance of the several Publishers of the various regular Law Reports, hoping that they would see that it was for their interest to assist the Bar in the effort now made to remedy the evils of the existing system—a system which the Publishers must be conscious had reduced their trade profits to a minimum without the

prospect of any improvement. With this object in view I endeavoured to approach the Publishers through Mr. George Sweet, who had been an active member of the Bar Committee, and was cognizant of all their proceedings and their object in preparing the Scheme. His father and brother formed, as I understood, one of the leading firms of Law Publishers and were owners of one or more of the regular Reports, and, if so disposed, would, as I believed, have influence with their brother Publishers. Mr. George Sweet entered into my views, and promised, though he did not entertain much hope of success, that he would use his best endeavours to point out to the Publishers that their common interests would be best served by tendering their services to the Council to act as agents, if satisfactory terms could be arranged ; and I considered I was authorized to offer a 10 per cent. commission on the gross amount of the subscriptions to cover cost of publication and delivery, the copyright being vested in the Council.

After the interval of about a fortnight I saw Mr. George Sweet again, and he told me it was hopeless to expect the Publishers to act together. There were several of them interested ; they were necessarily rivals in business, and as such were unwilling to communicate to each other their trade secrets ; the Reports were not all of equal circulation, nor consequently of equal value ; and I must, therefore, consider that the Council would not have any assistance from the Publishers as a body. They could only view the question as a trade question, and treat the Bar Scheme as a rival publication, ignoring any question of public interest. Shortly after my last interview with Mr. George Sweet, one of the leading Publishers, Mr. Butterworth, had an interview with me at my chambers, and urged upon me that the Bar Scheme, if it succeeded, would be an unfair interference with the vested interests of the Law Publishers, and to be deprecated on that ground. But, he added, its success was very uncertain, and if it failed it would be unpleasant to consider the consequences. He could only regard it as an extremely hazardous speculation at the best. It would have been an unprofitable occupation of time to have argued the case with Mr. Butterworth, and he left, I dare say, not very well satisfied. Some time afterwards a printed

paper was sent to the Council, of which the following is a copy:—

TO SIR FITZROY KELLY

AND

THE COMMITTEE OF THE NEW LAW REPORTING SCHEME.

GENTLEMEN,

The attention of the LAW PUBLISHERS having been called to a circular proposing to start A NEW SERIES OF LAW REPORTS, *due regard being had to existing interests*, they beg respectfully to state that the Publishers of the present Reports have been such for a great number of years, and hoped they had established a right, which they think ought to have been considered.

Under any circumstances they feel that the Committee, the Bench or the Bar, would never, by the creation of a monopoly, seek to injure the Publishers, who originally started, and, with a large capital invested, have through times of both profit and loss maintained the Reports. Yet the Circular proposes to publish the Reports at a certain price, and not allow the retailer any profit. Now the Law Publishers know of no instance in which such a scheme has been attempted; and would remark that the attempt would conduce to the failure of the project.

The Statutes at large, published by the Queen's Printer, are issued in accordance with the invariable custom of allowing a percentage to the retail dealer. The same is the case with "The Law Journal," with periodicals in general, and with works of every description.

The Publishers refrain from dwelling with too much emphasis on the fact that the Committee *propose to obtain the assistance of the Reporters of the existing Reports*, and thereby to induce them to relinquish their present engagements, and to unite themselves with the new Scheme instead. They had hoped that the Scheme might have been confided to hands already accustomed to the trade. The advantages of the publication being entrusted to them are, indeed, manifest; they know the Profession well, and have a staff, already in existence, fully competent for the purpose. They trust, therefore, that the Committee will reconsider this point; and in particular, that they will not consent to allow one House the entire right of publishing and retailing—a practice hitherto unheard of.

On reviewing the whole of the case, the present Publishers trust that they will be allowed a percentage on all copies sold by them, and the privilege of supplying with the new Reports all that they have been accustomed to supply with the present Series. It should be recollected by the Committee that every house in the trade is in the

habit of sending into the country, and also abroad, large quantities of books, and when the New Series of Reports is started, such houses will be requested to send and continue them; a task which can only be properly carried out (except at a great loss and expense) by establishments in the habit of supplying other works.

As a matter of policy, then, as well as justice, the interests of such houses should be respected. Their long experience affords the best means of securing success for the new speculation; and it is hoped that these facts will meet with that consideration from the Committee to which the undersigned Publishers submit they are fairly entitled.

The necessary consequence of the failure to obtain the assistance of the Law Publishers was that the Council sanctioned an application being made to Messrs. Clowes; bearing in mind the answer given by Mr. George Clowes to the question put by me to him, and which I read to the meeting held on the 28th of November, 1864, when the Bar Scheme was adopted, and which has been already stated. Before, however, proceeding to consider the arrangements afterwards made with Messrs. Clowes, I wish to point out and place upon record what would have been the pecuniary result to the Law Publishers if an offer of 10 per cent. on the gross amount of subscriptions had been accepted. These subscriptions amounted in 1866, as appears by the published accounts of the Council, to £20,334 18s., and in every succeeding year they have been gradually increasing, until in 1883 they amounted to £25,752 16s. 2d. Thus the commission in the first year would have amounted to £2000, and a little more, and would have gone on increasing year by year until in 1883 it would have reached £2500. It may be said, and said fairly, they, the Publishers, could not have foreseen such a result; nor could I. True, but I, with others, had faith in the ultimate success of the Bar Scheme—the Publishers had none. They regarded and denounced it as a hazardous speculation, exhibiting no feature of commercial success, and would only look at it from the tradesman's point of view. They regarded the notion of any interest on the part of the public as visionary. Our faith was founded upon the fact that as it was proved to demonstration that in 1830 there was a demand for the Reports of Barnewall and Cresswell which justified the printing of 6000 copies (of which 6000 copies I ascertained by personal inspection of the publishing

books in the possession of Messrs. Benning & Co. that 5643 were actually sold), there was good ground for believing (without waiting for demonstration) that there would in 1866 be at least an equal demand for a set of Reports which should be equal in point of merit and authority to those of Barnewall and Cresswell. And our faith has now been justified by the realization of the substance hoped for. I have not made these remarks to shew that the Publishers were blind to their own interests, but to satisfy the Profession and the public that the earnest and zealous supporters of the Bar Scheme were not mere theorists or doctrinaires, but were men of business, and as such influenced by considerations which as men of business they were justified in entertaining, and so entertaining were justified in endeavouring to carry into practical effect. And they have hitherto succeeded in so doing.

Contemporaneously with the endeavours made by the Council through me to obtain the assistance and co-operation of the Publishers, the Council, through me, endeavoured to approach the parties interested in "The Law Journal," in the hope that some arrangement might be made for merging that publication in "The Law Reports," in accordance with paragraph 26 of the Bar Scheme. The endeavour, however, failed, and, as I treated the communications as confidential, it is enough in this History to record the facts of the attempt and the failure.

The overtures of the Council having, under the circumstances stated, been rejected by the Publishers, I was authorized to communicate with Mr. George Clowes. I did so, and found him willing to receive and consider whatever proposals I might be authorized to make. The Council trusted to my discretion; and in substance my proposals were these: That his firm should undertake the printing, publication, and punctual delivery of the Reports free of charge to each subscriber, upon terms to be afterwards settled with the Council; that the Council should receive all subscriptions paid in advance—any subscriptions not paid in advance should be charged at an advanced rate, and be received by the firm and accounted for by them to the Council; that the Council should not, either collectively or individually, come under any personal liability to the firm in any shape or form, but

In order
Editors
paid for
published
We the
bequest

that the firm should depend for their security entirely upon the fund to be raised by subscriptions; and that the payment of one moiety of the salaries of the Secretary, Editors and Reporters, as proposed by the Scheme, should be the first charge upon the fund, and be paid out of the fund by the Council in priority to the charges of the firm for printing, publication, and delivery. These proposals, after careful consideration by Mr. Clowes, were at length accepted by him on behalf of his firm, and formed the basis of the arrangement which was afterwards made with the Council as to commission, prices, &c., the details of which form no part of the History I have undertaken to write.

The Council were now in a position to approach the Reporters of the regular Reports, and with that view they appointed Mr. Geo. Markham Giffard and myself a sub-Committee for the purpose. We had various confidential communications with several of those gentlemen, and explained to them the priority which the Council had stipulated for on their behalf with Messrs. Clowes, and which Messrs. Clowes had agreed to give in respect of the first moiety of the salaries as proposed by the Bar Scheme. To this proposal, however, an objection was taken that the Reporters were asked to exchange a certainty for an uncertainty—something substantial for what might prove unsubstantial. The fairness of this objection was felt by Mr. Giffard and myself, and we desired to meet it if possible. And I suggested a guarantee by the Bar for the period of three years of subscriptions, not exceeding £30 a year by each individual, and undertook to prepare such a guarantee, and use our best endeavours to get it signed. I did so, and had no difficulty in getting the guarantee signed to an amount which satisfied the Reporters.

The accompanying lithograph is a fac-simile of the guarantee, and the signatures of the guarantors.

It will be noticed in looking at the fac-simile (see opposite), that the signature of Lord Chancellor Cranworth heads the list with a subscription of £50, and his Lordship's signature is evidently inserted after the first signatures had been written. The signature was obtained under these circumstances:—Happening to be present at a reception given by his Lordship to the Bar, he spoke to me about the Bar Scheme, and the proposed

establishment of "The Law Reports." I then explained the matters as they stood, and that the regular Reporters had desired some better security for their salaries than the chance of subscriptions to be paid in advance, and that the guarantee had been numerously signed, and to an amount which satisfied the Reporters. His Lordship then added that he heartily approved of the Scheme, and he wished to testify his approval by signing the guarantee for £50 instead of £30, and he requested me to attend him at Lincoln's Inn the next day when he would be sitting there. I did so, and his Lordship prefixed his signature as it now appears.

But for this guarantee it is probable that none of the regular Reporters would have accepted appointments under the Scheme, and the main object might have failed to have been accomplished.

It is hardly necessary to add that the success which attended the Reports from the first rendered a resort to the guarantee unnecessary, and at the end of the three years all liability ceased. And it remains a striking proof of the power and influence of the Bar, when its members can be brought to combine for the furtherance of an object which they are satisfied is of public utility and professional benefit, untainted with selfish advantage to any individual.

The fact that Serjeants' Inn had not appointed any member of the Council, nor even returned any answer to the communication made by the Attorney-General, gave rise to a rumour that the Judges as a body disapproved of the Bar Scheme. This rumour was industriously circulated by the opponents of the Scheme, and, as might be expected, had the effect of checking the subscriptions to "The Law Reports," and thus prejudicially affected the labours of the Council.

As a member of the Law Amendment Society, I offered to read a paper on the amendment of the existing system of Law Reporting, before that society, which, as I have before observed, is not confined to lawyers; my offer was accepted, and Sir FitzRoy Kelly was invited to preside, and he presided as chairman. The paper was read on the 22nd of May, 1865, and the following is a copy:—

NATIONAL ASSOCIATION FOR THE PROMOTION OF
SOCIAL SCIENCE,

WITH WHICH IS UNITED THE

SOCIETY FOR PROMOTING THE AMENDMENT OF THE LAW.

*On the AMENDMENT of the EXISTING SYSTEM OF LAW REPORTING.** By
W. T. S. DANIEL, Q.C.

I AM not aware that at the present time anything new, either as matter of argument or as matter of fact, can be adduced upon the subject of Law Reporting. The question has now been before the profession and the public for full twenty years. Everything bearing upon it, in the shape either of argument or fact, has been brought forward by one or other of the several parties who at different times have felt sufficient interest in the question to take part in its discussion.

The evils of the system, and various suggested remedies, have been the subject of frequent discussion in the Law Amendment Society. Upon two occasions, one in the year 1849 and again in the year 1853, Committees of the Society were specially appointed to consider the matter. They did so, and afterwards submitted elaborate and most carefully prepared Reports, which were adopted by the Society, and afterwards published and extensively circulated. In 1858 the subject was brought before the Association by Mr. Napier, in his inaugural address at Liverpool, and again last year by Sir James Wilde in his address at York. In the Juridical Society the same subject has also been, at different times within the last few years, carefully considered and thoroughly discussed, especially in papers read by Mr. George Sweet and Mr. Westlake, and published in the "Transactions" of that Society. In "The Law Magazine," "The Law Review," "The Jurist," and in other legal publications of acknowledged merit, the subject has in former years as well as recently been thoroughly debated, and every argument which research and independence on the one hand, and subtlety and self-interest on the other, could bring to bear upon the matter, for and against, has been urged with zeal and perseverance, sometimes seasoned with a little harmless invective and abuse.

Our legal brethren in Scotland and Canada have also recently

* Read at a Meeting of the Jurisprudence Department, on Monday, May 22, 1865, and ordered to be printed and circulated. Sir FitzRoy Kelly, Q.C., M.P., in the Chair.

interested themselves in the question; and even in America the din of war has not been loud enough to silence the voice of the jurists and lawyers of that great country; for in Philadelphia during the autumn of last year, the subject was earnestly discussed with especial reference to the endeavours at reform which were being made in this country. And I observe that in Ireland, "The system of Law Reporting in that country and in England, with suggestions for its amendment," has been announced as the subject this year of an academical prize. I may refer also to Mr. Serjeant Pulling's excellent pamphlet "On our Law Reporting System," published in 1863, and to the interesting paper read before this Society by Mr. Edward Webster last year, and which has been published as part of our "Transactions." To all these may be added the investigation and inquiries undertaken and conducted by the Bar Committee, resulting in a report recommending a particular plan of amendment, which was afterwards adopted by a general meeting of the Bar, and is now being submitted to the profession through the agency of the Council of Law Reporting.

As the result of this long and frequent and varied discussion, and these many efforts at suggested amendment, it may be hoped that the public, as well as the professional mind, is prepared to expect that something will at some time be done. And it being the especial function of this Society to lend its aid towards the developing and maturing any reasonably fair plan that may be suggested for effecting an amendment in any part of our social, and especially our legal system, I have ventured to think that the reading before this Society of a paper upon the amendment of our present system of Law Reporting, with a view to consider what that something should be, and how it should be done, would be neither out of time nor out of place.

Bearing in mind the extent and nature of the discussion which the subject has already undergone, and that I am unable to introduce any novelty either in fact or argument, I shall propose to deal with the question as a practical one, and avoiding all mere theoretical disquisition, aim at finding an efficient remedy for a real grievance.

With this view I propose to consider the three following questions:—

1. Is it desirable that any change should be made in the existing system of Law Reporting, with a view to its amendment?
2. If so, what should that change be, and how should it be effected?
3. Is the particular scheme recommended by the Bar Committee calculated to effect the change desired?

In these days of material influences, when it would seem that the principle which guides men's conduct is the *quod prodest*, and every confidence apparently is felt that the *quod fit* will follow as a result, it is only paying due homage to the spirit of the age to acknowledge

the fact that the various classes of persons who have vested interests in the present system are compactly opposed to any change which shall not with certainty produce increased advantage to themselves. They look at home—their charity begins and ends there. The limits of their moral and intellectual horizon do not extend so far as to embrace any object which touches or affects any interests beyond their own. We have the power to take care of ourselves, these potentates say, and we will do so. The public interest is only our concern when we can make it serve our purpose; patriotism is not our profession. The resoluteness of this opposition on the part of the vested interests has the merit of intense sincerity, if it have no other. It is not to them, however, that the first question is addressed, nor by them, being parties interested, can it properly be judged.

It must be remembered, however, that there is a class of independent thinkers which, if not numerous, embraces individuals whose judgments are of considerable influence and entitled to the greatest respect, with whom the first question will properly, and, I hope, may usefully be discussed: those, I mean, who, looking at the question solely from the public point of view, are impressed with the conviction that the present system, although attended with some admitted inconveniences and imperfections, is nevertheless one in which no change can, in their judgment, be made, without introducing a greater amount of mischief than any which would be redressed. If I understand aright the grounds and reasons upon which this conviction rests, they are of this nature. The existing system has grown to its present full proportions, by the slow but sure progress of the principle of freedom. Reporting was once a monopoly, fostered and upheld, as they consider, by judicial influence. While it flourished as a monopoly it produced the fruit of monopoly—the sacrifice of public to private interests. The interests of the public and the Profession in good, regular, expeditious and cheap Reports were sacrificed to the private interest of individuals—Reporters and publishers. Reports were published, not as the interests of the public and Profession required, but as the interests and convenience of individuals permitted. Reports became costly in price, dilatory and irregular in publication; no remedy was attempted in the interest of the public; on the contrary, judicial authority was exerted with some severity to repress all attempts to remedy the evils by competition. Rival Reports were published at less cost, with greater expedition, and with satisfactory regularity. The Profession would have encouraged and supported them, but their citation in Court was somewhat despotically forbidden by the Judges, and the Bar did not venture to resist the prohibition. In the King's Bench, Dowling and Ryland struggled in vain for years to establish themselves as a co-equal authority with Barnewall and

Cresswell; and at a later period the attempt of Tamlyn at the Rolls to compete with Russell and Mylne was a signal failure. From the termination of the Chief Justiceship of Lord Tenterden, in 1832, however, a change came over the spirit of the Bench. The citation of rival Reports began to be permitted—first in the King's Bench, under the auspices of Lord Denman. By slow degrees the influence of this example spread, and at length diffused itself among the other Common Law Courts. The House of Lords itself yielded no effectual resistance, and the Court of Chancery, not then estranged from Westminster Hall, could not withstand the invasion. Free reporting established itself triumphantly, and still triumphs, to the great advantage of the Profession and the public. Happily there is no power strong enough, nor, I believe, any spirit weak enough, to desire to turn back the shadow on the dial of Ahaz. The good that has been gained must remain secure. The question is, are we to make an idol of the creature that has served us so well, and ought we to allow ourselves to become such blind worshippers as to be unable, or unwilling to see its defects; or, if we see them, must we deem it sacrilege to let the amending hand do its gentle but necessary office? No doubt different minds will attribute different degrees of weight to the mischievous effects of the present system: a cloud of witnesses might be summoned to testify to the heavy pressure of the evils which competition, under the excitement of free trade, has brought upon the profession—chancellors and ex-chancellors, judges in office, judges retired from office, jurists and statesmen, living and dead, advocates, practitioners, men of books, and men of business—it would be a weary occupation of your time to bring the array before you. I would endeavour to discover some test by which to try the accuracy of conflicting judgments upon this question. To this end I would suggest that free-reporting and free-trade-reporting are not necessarily identical. Let free-reporting flourish and bring forth its wholesome fruit in due season. The problem is to combine freedom with order, and to that end to establish such regulations only as are essential to the enjoyment of the fruits of freedom. So far as the commercial element is a necessary or a useful agent in developing, and upholding, and perfecting, freedom in reporting, let the agency be employed—but let the employment be as agent: let the agent be kept subordinate—it is not wise under any circumstances to let the servant become the master. Social progress cannot safely obliterate those distinctions which, whether they are regarded as the work of a providence which "shapes our ends, rough hew them how we will," or as the necessary result of an occult principle of development whose nature and essence have yet to be invented by man's wisdom, have, according to all human experience, in fact existed, and do still exist. Now in this matter of Law Reporting, has not the

servant been allowed to become the master? Has not the commercial predominated, and does it not now predominate, over the professional interest? And is not this fact the traceable cause of most, if not all, the evils of which complaint is made? Let me bring to the question the consideration of a few details. We all know that in the early periods of our legal history, Law Reporting, being treated as matter of public interest, was made matter of State concern. The Year Books were the works of public functionaries; the precise details of their appointment, remuneration, and duties, are not accurately known; the history has been lost, or perhaps never was written. They ceased in the reign of Henry VIII.—why, we are again without accurate information—we are left to conjecture. From that time until the year 1785, a period of upwards of two centuries, the Reports of legal decisions—decisions which supplied the materials from which some of the most important of our present laws have been constructed—were left to the chance industry and enterprise of individual Reporters. The last of these Reporters, and one whose style, for pithy conciseness, orderly composition, and lucid arrangement, might be recommended for imitation in the present day, was Mr. Douglas, afterwards Lord Glenbervie; his Reports were brought down to Trinity Term, 1785. The vast development of our jurisprudence, effected by the liberal learning of Lord Mansfield, having to be applied to the increasing wants of a community whose path has ever been one of progress in the march of civilisation, prompted the regular publication of Law Reports as a commercial undertaking. The Term Reports commenced in Michaelmas Term, 1785. The preface to the first volume is dated January 20, 1786, and it may be instructive to observe how uniform has been the public want, and how uniform also has been the mode adopted to meet it. As the preface is short, I will, with your permission, read it.

The desire universally expressed for a periodical work of this nature was the principal inducement which led the compilers of these Notes to submit them to public view; without any design of entering into a competition with any modern Reporter. Should they meet with approbation, they mean to pursue their plan of publishing the Notes of Cases adjudged in the Court of King's Bench within a short time after each Term.

In a work of this kind all that can be expected is accuracy; to publish and digest properly, requires long time and much labour, which would defeat the intention of this publication; the primary object of which is to remedy the inconvenience felt by every part of the Profession of waiting two or three years till some gentleman of experience and ability has collected matter sufficient to form a complete volume.

With these motives, the publishers beg leave to lay in their claim to the candour of the Profession.

The delay in the publication for two or three years of current

decisions was, in 1785, considered to be a want of the Profession which then required to be supplied; this want was proposed to be met by the regular publication of periodical Reports shortly after the end of each term. The modesty with which the Reporters spoke of their intended labours did not prevent the merit of their Reports from being at once appreciated, nor the value of the system of speedy and regular publication from being understood. This system thus founded by commercial enterprise met the wants of the Profession; other series of regular Reports upon the same principle were afterwards, at different intervals, established in the different Courts of Westminster Hall; in the Court of Common Pleas, in 1788, by Mr. Henry Blackstone; in the Court of Chancery, in 1789, by Mr. Francis Vesey; in the Exchequer, in 1792, by Mr. Anstruther. A regular series of Reports of decisions in the House of Lords was commenced by Mr. Dow, in 1812. Under this system, commercial enterprise undertook to supply that public want which was not supplied by any existing authority. The judges had not the power, and the Government had not the disposition to do it. The speculation was a great success. These Reports, thus supplying a public want, commanded a large circulation, and yielded large profits, in which it was to the interest of the publishers to let the Reporters share. The Reports became valuable properties, and the wonted prepossessions in favour of property were engendered towards them; they became a monopoly; the ordinary yearly circulation of the Queen's Bench Reports reached, and for years was maintained at 4000. The remuneration of the Reporters was as high as £40 per sheet of sixteen pages—a volume of Barnewall and Cresswell was worth £2000 a year to the Reporters, and their labours were worth the money. The ordinary yearly circulation of even the Chancery Reports was 2000, and the publisher willingly rewarded his Reporter with £800 a year—the publisher's profits, however, were the lion's share. Now mark the consequences; exclusive citation, originally a necessity, had grown up into a right which was maintained by authority; what followed was costliness in the price, delay and irregularity in the publication. The interval of two years between the decision and the Report, the evil which, according to the preface just quoted, the series of regular Reports had been brought into existence to remedy, after being for a time redressed was reproduced in another form through the operation of the remedy. A commercial monopoly having been established, the interests and convenience of the individuals, whether as Reporters or publishers, were allowed to predominate over all considerations for the public and the Profession. There was no power which could or would exercise control in the interest of the public. The publisher, who had usefully come forward to serve the public in supplying a want which the public could not get supplied

by any other means, found himself, by the ordinary operation of existing circumstances, in a position to advance his own interests at the expense of the public, and of course he did so as long as he could. The servant had become the master. The public, however, by the favourable accident of circumstances, ultimately found a remedy for this commercially engendered evil, through the operation of another commercial agency—Competition.

When once the point of the wedge had been introduced, by slow but sure degrees Competition established itself in the several Courts, and by cleaving monopoly asunder, remedied the evil which commercial greed, left without control, had engendered. There was then no delay, no irregularity, no mischievous judicial patronage. Ask those interested in the existing series of the regular Reports which trace back their pedigree in orderly succession to the *propositus* from which they sprung, the descendants of Durnford and East, of H. Blackstone, Anstruther, Vesey, junior, and Dow, to compare the profits of the present day with those of the days before Competition was permitted, and they will tell you Competition has sorely diminished them. A scanty remuneration to publishers and Reporters, is the description given by Mr. George Sweet in his paper before referred to. Competition, acting as a besom to make a clear way for supplying the public want, swept down the vested interests of commercial monopoly without scruple or remorse.

Competition has had its day for upwards of thirty years, and it is now upon its trial. The public want is the same now as it was in 1785—the same now as it was in 1835. Commercial enterprise, though in 1785 it supplied the want in a particular form which was for many years satisfactory, at length was tried in the balance and found wanting. Competition, for a time, made good its defect by uprooting its monopoly. After thirty years' possession Competition is charged with failing to supply the public want in the manner which the public interest requires. Why should not Competition be called to account, and submit to a fate similar to that which was visited on monopoly? Let me remind you of the race Competition has run. "The Law Journal" from the year 1832, the commencement of its new series, has been the established rival of the regular Reports, and from that period (1832) Competition may be dated. In 1837 "The Jurist" started into existence; in 1842 "The Law Times;" in 1852 "The Weekly Reporter;" in 1862 "The New Reports;" and in 1872 may we not expect another? Hoping the remark will not offend, I venture to say that the primary object of all these Reports is not the supply of the especial want of the public, but the object is to secure to individuals a commercial profit without reference to that want. The want of the public has been, and is, uniformly the same—namely, an accurate Report

published with expedition and regularity and at a moderate cost, to which reference can be made for all purposes of inquiry as to case law. That want is not now supplied through the oppression of numbers. The multiplicity of the Reports is no security for their accuracy. Recent events have brought forth the avowal of the fact that Reporters interchange their notes. The publication of a Report under the name of a barrister is no longer any voucher that, though accredited by his name, it is the result of his own skill and labour. Six Reports of the same case, even if all were original, would be either oppressive or mischievous, oppressive if they are all alike, mischievous if they differ. Unrestrained Competition, though it has effectually destroyed the trade monopoly of Reports, has, through the same influence operating in another form—the pursuit of commercial profit to individuals without reference to the public requirement—introduced a new class of evils which are the opposite or converse of those introduced by monopoly. Under monopoly the public had the one report, but burdened with the evils of costliness, delay, and irregularity; under Competition, costliness is not diminished—for existing Reports are not superseded, and continuing to be published must be referred to—in place of delay and irregularity the public are burdened with the evils of multiplicity, endless repetition, confusion when Reports differ, and the publication of a mass of cases useless as precedents. The problem is to find a plan by which the distinctive evils of each system which experience has brought to light may be avoided, and the one want of the public supplied, and I venture to think that the attempt to solve the problem is worth the trial.

The course of the observations already made has sufficiently indicated, if any change in the present system be attempted, what, as I think, that change should be—one set of Reports under one management, subject to such control as would prevent monopoly on the one hand, and disorder and confusion on the other. How to attain that object is the question. Some control there must be, and the choice appears to lie between the Government and the Profession. Much is doubtless to be said in favour of Government authority. Principle may be fairly alleged to be on its side. The promulgation of the law is one important function of Government, and case law is as important as statute law. The circulation of correct law throughout the realm is as important as the circulation of good coin—and Government has long ceased to entrust the coinage even of the baser metals to individual enterprise—why, it may be asked, should not all law be issued under the seal of its authority? But I confess it seems to me that this is not a question which can be determined by analogies or rhetorical flourishes. We have not been entirely without experience, and such as we have had has not shewn results which can be appealed to with

confidence. But without being disposed to indulge in speculative objections, I feel that there are practical difficulties in the way which would render the obtaining any remedy through Government interference very doubtful. I doubt much if Government could be prevailed upon to grant the funds necessary for the purpose, and if they were told the Reports would be self-supporting, the reply would probably be, then there is the less need of our interference. And, moreover, it is in accordance with the spirit of our institutions and the policy of our Government, to leave as much as possible to private enterprise all that private enterprise can effect. But if any Government could be prevailed upon to entertain the plan, judging from experience in other law reforms (I allude particularly to the appointment of a public prosecutor), would not the question of patronage be a stumbling-block? It seems to me that the office and duties of a Reporter require the possession of qualities which it would be difficult to obtain and keep combined in a salaried official. I mean particularly the spirit of independence and the stimulus to sustained exertion. If a system of Reporting under Government authority were established, I presume Parliament would enact that those official Reports should be of exclusive authority. Suppose a Reporter to become careless or inefficient, and his Reports imperfect or inaccurate, no Act of Parliament could prevent the publication of other and more accurate Reports, and the independence of the Bar, exercised in open Court, would in some way find the means of citing such Reports. In the interest of the Bar as inseparably connected with the interest of the public, I venture to think that these useful elements should be maintained and fostered, and I fear that under a Government system they would languish and die out. Cannot a scheme be devised which will accomplish the desired result through professional agency without Government aid? The Bar Scheme is an attempt to do it. Is it reasonably adapted to the purpose? I have no intention to make myself the advocate of that Scheme. I shall content myself with endeavouring to explain its leading principles. It rests upon these data:—

I. That what is wanted for the Profession and the public is one set of Reports which shall be so conducted as to be accepted by all branches of the Profession as the only standard of authority for case law.

II. That the Profession, as they require Law Reports for professional purposes only, shall not be taxed with commercial profits in favour of parties who do not contribute skill, labour, or materials towards the preparation and publication of the Reports.

III. That Reports established upon this principle would command a circulation which would enable them to be sold at a reasonable price, and afford liberal remuneration to those members of the Profession

who shall be engaged in their preparation—and that those members ought to be so remunerated.

Proceeding upon these data, the Scheme proposes not to supersede but to fuse and organize existing interests as far as they are capable, and are willing to be made the subject, of such fusion and organization. Commencing with the regular Reporters, the first object of the scheme would be to bring the existing sets of Reports under one management. These are now published separately and independently of the other, at an aggregate cost to the Profession of £30, and yet yield a very meagre profit to all those interested. The scheme aims at going further, and would, if practicable, embrace "The Law Journal," but any proceeding under it rests upon consent. I venture to concur in an opinion that has been expressed that a fusion of the regular Reports and "The Law Journal" into one set is that which would best answer the requirements of the Profession, and I think that if the will existed in all necessary quarters, the large and liberal support of the Profession, at home and abroad, would supply the means for effecting a just and liberal arrangement upon the principle of fusion. Experience has shown that the legitimate wants of the Profession require for present use a more rapid publication than would be compatible with a carefully prepared Report, and therefore, the scheme does not aim at any present interference with any weekly legal publication. Competition is not sought to be excluded, only to be moderated; nor is monopoly sought to be established. Exclusive citation would be left to be attained, if at all, as the result of an improved system. If the Profession were supplied with one set of Reports with which they were satisfied, it may reasonably be presumed that the demand for others would fall off; and as they would in that case cease to be profitable they would cease to be published. The Judges would thus be brought to the position in which they were when the Term Reports were first established.

The Scheme asks the sanction and assistance of the Judges by submitting the appointment of Reporters to their approval, giving the Reporters access to such papers as they can control, and revising their judgments, at least their unwritten judgments, before publication. To guard against the degeneracy of the Reports, and to provide for their punctual and regular publication, the Scheme suggests the formation of a Council consisting of members selected from the existing institutions of the Profession, with the Attorney-General, the Solicitor-General, and the Queen's Advocate for the time being, as *ex-officio* members. The services of this Council are to be rendered gratuitously, the elected Members are subjected in certain proportions to annual change—to be recruited from the ranks of the Profession—and it is proposed that the Council should be incorporated. Their

duties are confined to general superintendence and control; they appoint the Editors and Reporters, subject to judicial approval. The preparation and publication of the Reports would be exclusively the duties of the Editors and Reporters. The finances are to be managed by the Council, with the assistance of a paid Secretary—the amounts being audited annually under the direction of the Editors and Reporters—and the Council would make an annual report to the Profession. There would be no secrecy, no mystery. The means which the Council look to for carrying the scheme into operation are the voluntary support and co-operation of the several branches of the Profession. The extent to which these will be accorded must be left to time to exhibit.

Though there are some professional interests adverse to the Scheme, the Scheme is adverse to none. It seeks the single object of accomplishing public improvement by means of the simplest kind—means so simple that it requires a considerable effort of perverse ingenuity to misrepresent them. It would preserve and uphold the interest and honour of the Bar by making a valuable privilege subservient to the public good. It would keep the employments of an honourable Profession distinct as far as practicable from commercial distractions. It would preserve and perpetuate the principle of freedom in Reporting by subjecting it only to those regulations which are necessary to accomplish the public objects for which alone such freedom is desirable. (1)

After awhile, and during the latter part of the summer, the subscriptions came in more freely, and the Council proceeded to appoint the Editors and Reporters, and, although they met with some refusals which they regretted, they were enabled to complete the appointments for all the Courts, including the House of Lords, and ultimately the Privy Council, in a manner which was satisfactory to themselves, and they felt assured would be

(1) During the discussion on this paper, Sir FitzRoy Kelly said, "An impression, quite erroneous (he believed), existed as to the feelings and opinions of the Judges on the subject of the new scheme. It was true they did not think it befitting their dignity, or suitable to their position, to move in the matter, although they were, perhaps, of all classes the most likely to derive benefit and relief from the intended alteration. There were, however, adverse interests involved—interests which the Judges might eventually have to deal with. It was, therefore, not to be expected that, though favourable to the undertaking, they would take any active steps in promoting it. He had, however, reason to believe from the few communications he had had the opportunity of holding with the Judges, that they were well inclined towards the movement, and desired to see it successful."

satisfactory to the Judges and the Profession, and I had prepared an address to be sent to the Lord Chancellor and the Judges of the several Courts.

A meeting of the Council was appointed to be held on the 26th of October, 1865, as was supposed, for the mere formal purpose of authorizing and directing the Reporters to take their seats and commence their labours on the 2nd of November, the first day of Michaelmas Term, and to direct the sending of the address to the Judges. Only three members attended, Sir FitzRoy Kelly (in the chair), Mr. Karlake, and myself. We were a quorum, and competent to bind the Council by any resolution we might pass. A letter from Mr. Hurlstone, addressed to Sir FitzRoy Kelly, was produced, raising the objection that under the 21st clause of the Scheme of the Bar Committee the Council had no authority to proceed until the subscriptions had reached £10,000 at the least. Mr. Karlake concurred with Sir FitzRoy in considering the objection entitled to serious consideration, and, as the actual subscriptions had not reached £10,000, we ought not to proceed at present. I pointed out that Mr. Hurlstone had nothing to do with the proceedings of the Council: he and his colleague had been offered the Reportership in the Exchequer, and he had taken upon himself to refuse for both, although it was believed that his colleague, Mr. Coltman, if he could speak for himself, would have accepted the appointment, and I therefore urged that Mr. Hurlstone had no *locus standi* before the Council, and ought not to be allowed to raise his present objection, especially as, if entertained at all, it would render the labours of the Bar Committee and the Council abortive. I then suggested that, at all events, we should not come to any resolution without first communicating with the Attorney-General. This suggestion was acceded to, and I immediately went to the Attorney-General's chambers in New Square, had an interview with him, explained the situation, and he suggested that a meeting of the Council should be called for 1 P.M. on the 30th of October (the following Monday), when he would attend, and notice be given by the Secretary to all the members of the Council of the object of the meeting, and their attendance requested. I returned to the Council and communicated this suggestion of the Attorney-

General, and it was adopted and acted upon, and the meeting was accordingly adjourned to the following Monday at 1 P.M. Due notice of the meeting and its object was given to each member of the Council, and the meeting was held. There were present the Attorney-General, representing the *ex-officio* members, Sir Fitz-Roy Kelly and myself, representing Lincoln's Inn, Mr George M. Giffard representing the Inner Temple, Mr. Greene and Mr. Karslake representing the Middle Temple, and Mr. Cookson and Mr. Williams representing the Incorporated Law Society. The Attorney-General took the chair, and Mr. Hurlstone's objection being stated by me, all present (with the exception of Mr. Karslake) unhesitatingly agreed that the objection could not be entertained—whereupon Mr. Karslake withdrew, expressing his conscientious opinion that the Scheme would prove a failure, but that he should not further interfere. Thereupon it was resolved that the Council proceed to complete the appointments (some of which had been left open in the hope that the Reporters to whom offers had been made, and who had hitherto refused, would at the last moment come in) and take measures for the commencement of the Reports on the 1st day of Michaelmas Term. The Attorney-General then vacated the chair, and was succeeded by Sir FitzRoy. Thus the Attorney-General's firmness, it is not too much to say, saved the Scheme from destruction at the last moment.

It should here be stated that Mr. George Clowes, on the 27th of September, had offered on behalf of his firm to make good whatever number of subscriptions might be required to raise the sum of £10,000, so as technically to satisfy the terms of the Bar Scheme. And at the meeting of the 30th of October, on the motion of Mr. Giffard, seconded by Mr. Greene, it was resolved that the offer of Messrs. Clowes contained in their letter of the 27th ultimo be accepted. This offer was merely precautionary and was never acted on—the precaution proving unnecessary.

The Reporters in the Courts at Westminster who had declined the offer of the Council, besides Messrs. Hurlstone and Coltman in the Exchequer, were Messrs. Best and Smith in the Queen's Bench, Mr. Best declining for both, though his colleague would have been willing; and so anxious were the Council to leave the

door open for these gentlemen to come in at the last moment that the appointments for both Courts were at first made only provisionally, and these appointments were not made absolute until the Council were assured that the refusal was final. And then Mr. Williams Mills and Mr. Henry Holroyd were appointed Reporters for the Court of Queen's Bench, and Mr. Arthur Charles and Mr. James Anstie were appointed Reporters for the Court of Exchequer.

Mr. Beavan had already taken his own independent course, satisfied with the protection and patronage of the Master of the Rolls, Lord Romilly.

At the meeting of the 30th of October, 1865, after Sir FitzRoy Kelly had taken the chair vacated by the Attorney-General, the first resolution passed was that an address stating the present state of the Scheme of Law Reporting be forwarded to the Judges, and it was forwarded accordingly. The following is a copy of the address:—

To the Right Honourable and Honourable the LORD HIGH
CHANCELLOR and the several JUDGES of *Her Majesty's*
Superior Courts of Law and Equity at Westminster, the
following Address of the COUNCIL OF LAW REPORTING
is respectfully submitted.

The Council of Law Reporting, as the Judges are no doubt aware, owe their existence to a Scheme for the amendment of the present system of Law Reporting, which was approved and adopted by the Bar at a general meeting convened for the purpose by the Attorney-General, and held under his presidency, on the 28th day of November, 1864.

The Scheme itself was the result of the labours of a Committee of Barristers appointed at a meeting of the Bar, convened and held under the same authority on the 2nd of December, 1863, for the purpose of considering and preparing a plan for the amendment of the present system; and that system had, by a previous resolution of the same meeting, been pronounced to be unsatisfactory, and to require amendment.

The Committee thus appointed consisted of twenty-two members of the Bar—ten of them members of the Inner Bar, and twelve of the Outer Bar. Of the ten members of the Inner Bar, six, including the Queen's Advocate, represented the Common Law Bar, and the

remaining four the Equity Bar. Of the twelve members of the Outer Bar, two represented the body of practising Conveyancers, five the Common Law Bar, and five the Equity Bar. The professional position of the several members of the Committee was such as to place its character beyond the reach of objection or even cavil.

The meeting which appointed this Committee was convened by the present Attorney-General, upon a requisition signed by 382 members of the Bar, including, with only three exceptions, all the leaders of the Chancery Bar, and about twenty-five leaders of the Common Law Bar. And the meeting itself was attended by upwards of 700 members of the Bar.

The Scheme of amendment recommended by the Committee, and afterwards approved by a general meeting of the Bar, was the result of six months' assiduous and gratuitous labour on the part of the Committee.

These facts are referred to for the purpose of shewing that the Council of Law Reporting has its origin in a deliberate and sustained effort of the Bar to discover and carry into effect a remedy for a very great evil, involving much public mischief arising from the uncontrolled use of one of the important exclusive privileges of the Bar, namely, the privilege of reporting the decisions of our Superior Courts of Justice for citation as authority. The proceedings which followed, originated and were concluded under the auspices of the Attorney-General, as the proper leader of the Bar, and conducted throughout in a manner becoming their importance, and solely with the view of helping to accomplish a public object which has been long desired, but hitherto deemed impracticable.

The Scheme, thus prepared and approved, contemplated the co-operation, in the formation of the Council of Law Reporting, of the four Inns of Court, Serjeants' Inn, and the Incorporated Law Society.

The Benchers of Gray's Inn declined to co-operate, stating as their reason that they had not sufficient confidence in the Scheme to give it their support.

Serjeants' Inn declined to send a member to the Council, the Judges, members of that Inn, considering, as it is believed, that in the then stage of the matter it would not be desirable to adopt any proceeding which might be regarded as a premature interference on their part.

The other three Inns of Court and the Incorporated Law Society appointed members of the Council, as proposed by the Scheme; and these members, so appointed, with the concurrence of the Attorney-General, the Solicitor-General, and the Queen's Advocate, as *ex-officio* members, have undertaken the duty of endeavouring to give effect to the public improvement contemplated by the Scheme.

It is proposed that the Reports shall be placed under the manage-

ment and control of the Council ; that they shall be prepared by Reporters, under the supervision of Editors, all being Barristers of reputation and experience ; that they be published in monthly parts, with regularity and promptitude ; and so that, as far as practicable, there be no arrears ; and that the remuneration of the Editors and Reporters be by salaries, with provision for future increase to an amount, as it is hoped, commensurate with the value of their professional services, and so as to leave them no longer exposed to the risks, uncertainties, and exaction, which have been found to be inherent in every system which makes Law Reporting a commercial adventure, involving a trade profit.

The Council have been enabled to make financial arrangements for the establishment of the proposed Reports which place the interests of all those members of the Bar whose services will be engaged as Editors and Reporters beyond the reach of any commercial risk.

For special reasons, the Council feel it due to themselves, and right to the Profession, to state the general nature of these financial arrangements. The Council have always considered themselves bound to give effect to the provisions of the Bar Scheme according to their true intent and meaning, with the view of accomplishing (if practicable) the prime object of the Scheme, namely, the establishment of one complete set of Reports under professional control. By the 21st clause of the Scheme, it is contemplated that for the establishment of the Reports, a subscription of £10,000 is essential. The Council have invited subscriptions for that purpose and obtained them to an amount which would have considerably exceeded £10,000 if the Government guarantee contemplated by that clause had been obtained. It was, however, found impossible to obtain that guarantee ; and that being so, the Council might, had they been so minded, under the terms of the 22nd clause, have cancelled the list and abandoned all further proceedings ; but with the full concurrence, or, rather, at the urgent request of many members of the Bar, they have not done so. They have resorted to the authority given to them by the 27th and 28th clauses of the Scheme. And having, to their great regret, received no offer of assistance from any of the London law publishers, they have entered into arrangements with a firm of printers of large capital, skill, and experience (Messrs. W. Clowes and Sons, of Duke Street, Stamford Street), under which the publication, sale, and distribution of the Reports are undertaken at the entire risk of the printers for an agreed commission of moderate amount. The receipt of the subscriptions is retained by the Council in order that the moneys may be applied by them, and not the printers, to the payment to the Editors and Reporters of the first moiety of the salaries which by the Scheme is proposed to be guaranteed. The sum already subscribed for exceeds

the amount of this first moiety; but in order that there may be no risk or uncertainty whatever in this payment to the Editors and Reporters, a Guarantee Fund has been formed by the voluntary subscription of members of the Profession. This fund now reaches nearly £2000 per annum, and is exclusively devoted to the Editors and Reporters. It was first signed by the Attorney-General, Sir Roundell Palmer, afterwards by the Lord Justice Turner, Vice-Chancellor Kindersley, and Vice-Chancellor Wood; and after having been also signed by many leading members of the Bar, has been since signed by the Lord Chancellor for a larger amount than any other individual guarantee. The printers have engaged to make up the full subscription to £10,000, and to look exclusively to the surplus subscriptions for payment of their charges for printing and paper. These charges have been settled at fixed rates of moderate amount. These arrangements the Council confidently represent as amply sufficient to place the establishment of the proposed Reports upon a firm financial basis and one perfectly satisfactory to the Editors and Reporters appointed.

Having thus completed their financial arrangements, the Council, on the 1st of August last, resolved that the proposed Reports should commence upon the first day of Michaelmas Term next; and in pursuance of that resolution have elected the following gentlemen as Editors and Reporters, subject to the approval of the Judges, as proposed by the Bar Scheme:—

Editor, Common Law.

J. R. BULWER, Esq., Q.C.

Equity.

G. W. HEMMING, Esq.

House of Lords.—English and Irish Appeals.

CHARLES CLARK, Esq.

Scotch Appeals.

J. F. MACQUEEN, Esq.

Privy Council.—This appointment is under consideration.

Courts of the Lord Chancellor and Lords Justices.

CADMAN JONES, Esq.

MARTIN WARE, Esq.

R. HORTON SMITH, Esq.

Court of Queen's Bench, including Appeals therefrom to Exchequer Chamber.

WILLIAM MILLS, Esq.

HENRY HOLBOYD, Esq.

Court of the Master of the Rolls.

CHARLES MARETT, Esq.

J. H. FORDHAM, Esq.

JAMES STIRLING, Esq.

Court of the Vice-Chancellor Kindersley.

T. W. GUNNING, Esq.

J. J. SMALE, Esq.

Court of the Vice-Chancellor Stuart.

J. W. DE LONGUEVILLE GIFFARD, Esq.

T. F. MORSE, Esq.

Court of the Vice-Chancellor Wood.

J. B. DAVIDSON, Esq.

F. G. A. WILLIAMS, Esq.

W. D. GRIFFITH, Esq.

Court of Common Pleas, including Appeals to Exchequer Chamber.

JOHN SCOTT, Esq.

H. M. BOMPAS, Esq.

Court of Exchequer, including Appeals to Exchequer Chamber.

JAMES ANSTIE, Esq.

ARTHUR CHARLES, Esq.

Crown Cases Reserved.

L. W. CAVE, Esq.

HON. E. CHANDOS LEIGH.

Admiralty and Ecclesiastical.

W. ERNST BROWNING, Esq.

Probate, Matrimonial and Divorce.

DR. TRISTRAM.

R. SEARLE, Esq.

In the selection of these gentlemen, the Council have been guided wholly and exclusively by the directions of the Scheme and the merits and fitness of the gentlemen chosen. The existing authorized Reporters for the several Courts have therefore been invariably preferred wherever they have consented to accept the appointment; and the Council have every confidence in the ability and competence of all selected, faithfully and satisfactorily to discharge their duties.

The Council have to regret that, after every possible effort within the authority with which they are invested to secure the services of the present authorized Reporters for the Courts of Queen's Bench and Exchequer and the Rolls Court, they have been unable to prevail upon those gentlemen to accept the appointment.

The Judges will no doubt recognise the important result which will at once be realised from the acceptance of the appointments by so many of the authorized Reporters, namely, the discontinuance, from the first day of Michaelmas Term next, of ten sets of Reports which have been hitherto published separately, each independently of the other, at irregular and sometimes long-protracted intervals, and at an immoderate cost.

The object of the Bar Scheme being the careful preparation of one complete set of Reports, by the most able and experienced Reporters, *under independent professional control*, to be published with expedition, regularity, and uniformity, and at the moderate cost of five guineas a year for the entire work, the Council venture, on behalf of the Profession, to present it to the Judges as a matter of public interest and importance, and calculated to uphold the real interest of the Bar by subjecting the exercise of one of its most important privileges to those restrictions which the public good, the true consideration for the privilege, requires; to facilitate the administration of justice, by simplifying and purifying the sources of the law, and thus ultimately to lead to important amendments in the law itself.

For the furtherance of this object, and upon public grounds alone, the Council by this Address respectfully and earnestly request the sanction and support of the Judges for the following purposes:—

1. That the Judges will approve of the appointment of the several gentlemen named as Reporters to the several Courts for which they have been selected.

2. That the Judges will be pleased to permit the Editors and Reporters to have access to, and the use of their written judgments, and all such papers as the Judges can control; and will also, so far as convenient and agreeable to the Judges themselves, revise their unwritten judgments before publication.

And 3rdly. That the Judges will recognise the Editors and Reporters as members of the Bar exercising a professional privilege for a public object, under responsibility, through the Council, to the Judges, the Bar, and the Profession at large.

By order of the Council,

FITZROY KELLY,

Chairman.

October 30, 1865.

The Scheme with all its chances of success or failure was now afloat. All the sunken rocks and shifting quicksands were passed; the vessel was fairly started on her voyage with an open sea before her. And unless the faith on which the Scheme was rested proved hollow, the success or failure in the future depended upon the efficiency of those to whom the fortunes of the vessel were entrusted, and whose legitimate interest it was expected would operate as a security for the faithful performance of their duties; and the expectation has been fully realized.

Here the History of the Origin of "The Law Reports" properly ends. And I shall have written it in vain if I have not established

in the mind of the reader the conviction that the merit of success cannot be claimed by any one individual but must be shared proportionably by all who voluntarily devoted their time, their labour, and their skill for the purpose of establishing what they satisfied themselves would, if established, be a boon to the Profession and the public. I have purposely, perhaps at greater length than rigid criticism would approve, given, in detail, the various proceedings taken and papers printed bearing upon, whether for or against, the Scheme propounded by different persons, so that those who care to read these details may mark the means by which an honest and disinterested attempt to achieve a public good has resulted in success without resort to official patronage or Government support. I hope it may be regarded as the *Triumph of Unselfish Self-Reliance*, by the Bar, acting as a body through its recognised leaders.

I should not, however, do justice to the labours of my collaborators and myself if I were not to append a statement of the subsequent proceedings of the Council up to the time when I ceased to be a member, namely the 2nd of June, 1870, and this statement will be found in the concluding division of this work, and be supplementary to the main object.

CONCLUSION.

A SUPPLEMENTARY CHAPTER.

THE History of the Origin of "The Law Reports" will not be satisfactory if it stops on the 2nd of November, 1865, the date of their commencement. I propose to shew, as supplementary to the origin of the Reports, the progress they made up to the time when, finding from my other engagements I was unable properly to discharge my duties as Vice-Chairman, I felt myself bound to tender my resignation to the Council. This I did on the 2nd of June, 1870, and it was on that day accepted.

The fact that at the commencement of Michaelmas Term the Reporters appointed by the Council took their seats in the several Courts in Westminster Hall, in Lincoln's Inn, and at the Rolls in Chancery Lane, was a circumstance which was treated by the public press as one in some degree of public interest and importance.

And an article appeared in "The Times" of the 7th of November, 1865, of which the following is a copy:—

The new experiment in Law Reporting is now in actual operation, under the superintendence of a Council, representing the three principal Inns of Court and the Incorporated Law Society. Two statements recently issued by this Council, the one addressed to the Judges, the other to the Legal Profession, explain the nature of the proposed reform, and the degree of encouragement which its authors have received. For some time past the increasing bulk and expense of Law Reports, the utter want of uniformity in their compilation, and the extreme irregularity of their appearance had overtaxed even the patience of practitioners. At last a meeting of the Bar was called, in December, 1863, and the whole subject was, as usual, referred to a Committee. The Committee duly entered on their labours, and, as usual, differed among themselves not only on details but on principles. They succeeded, however, in producing a report, afterwards adopted by a second meeting of the Bar, recommending the formation of a Council, with power to organize a staff of Reporters, to contract with publishers, and to make all other necessary arrangements for the establishment of one complete set of Reports under independent yet authoritative control. It was an essential feature of

the system that it should be governed by professional and not by commercial interests, and the advantages expected from it were greater care in the selection of cases, with less prolixity and greater promptitude in publication, at a very moderate cost. The Council believe that they are now in a position to realise these promises. Although the number of subscribers and the amount of subscriptions have fallen far short of their hopes, and although they have neither obtained a Government guarantee nor conciliated the law publishers, they speak confidently of their prospects. They have already secured the assistance of the "authorized Reporters" in ten at least out of the fourteen Courts whose decisions are to be recorded, have procured the general sanction of the Judicial Bench, and have overcome their financial difficulties in a manner which is said to be perfectly satisfactory to all concerned. We shall soon possess a specimen of the results, and if it should justify the expectations of the Council, the public, as well as the lawyers, will have much reason to be grateful to them.

Of course such a scheme could not fail to excite much jealousy and hostility among those whose monopoly is thus invaded. Four eminent law publishers have forwarded a formal remonstrance to the Council, setting forth their grievances. They resent the intrusion of "a new series of Law Reports, to be based upon the ruin of all existing ones," and "implying the annihilation of a considerable portion of their incomes." They submit that, as prudent men of business, they could not lend themselves to an enterprise "which seemed to be deficient in the elements of financial success," and threatened to glut a market already overstocked. They claim the credit of having been the first to issue "regular" Law Reports, and cast the whole blame of "their subsequent decline, arising from protracted appearance and lengthiness," upon the Reporters themselves. They consider it a great hardship, therefore, that the Council should have enticed away nearly all the gentlemen in their employ by the offer of higher and fixed salaries, and should have arranged with Messrs. Clowes, the printers, for the publication of the new Reports upon terms "which must utterly exclude the law publishers, and all others, from the usual trade allowance." "The retailer's profit," they say, "is an institution of great antiquity," older even than the Year Books, and always heretofore respected. Having thus protested against these infringements of their own rights, they conclude, somewhat inconsistently, with a tender of their services to the Council, proposing "to become, as a united body, the publishers" of the obnoxious work, to secure the widest possible circulation for it, and to "discourage whatever opposition may exist now and hereafter." In other words, having done their best to suppress competition, and having, as the Council believe, mainly contributed to prevent the subscription list

being filled up, they are now alarmed at the progress made by an enterprise "deficient in the elements of financial success," and want to cast in their lot with it. A more unreasonable request never was made, and the arguments by which it is supported would be rejected by the most bigoted Protectionist. The law publishers deserve no thanks for establishing the so-called regular Reports. It was a mercantile speculation of the most ordinary kind, and the reason why a new series is demanded is that they have supplied a bad article, at an exorbitant price, and often too late to be of use, out of a short-sighted regard to their own profit. The Council express much regret that no law publisher would come forward to co-operate with them; and it would be monstrous, indeed, if under these circumstances they were to be precluded from making their own bargain with another firm. As for any deviation from the rules under which they are empowered to act, this is obviously a question between them and the subscribers, just as the scale of remuneration is entirely a question between them and the Reporters. The law publishers have no *locus standi* in the matter, and the fact that, as they contend, they are "the only parties prejudicially affected" is one that it would have been more discreet to conceal.

There are other obstacles, however, quite independent of vested interests, which may tend to defeat the sanguine anticipations of the Council. Their scheme is, after all, a compromise between two conflicting theories of Law Reporting. A Report may be intended to preserve the essential points of a case for the purposes of future citation, or it may be intended to furnish the public with a continuous account of what actually took place in Court. The latter is the primary object of such Reports as appear daily in this journal, but it is not the primary object of those Reports which purport to embody our Case Law. A perfect collection of precedents would consist mainly of considered judgments in which the material facts should be recited with the utmost possible brevity. The first condition of such a publication would be that all important judgments—that is, all that are worth registering—should be written, and this obviously depends on the hearty support of the Bench. Until Judges can be induced to undertake an amount of additional trouble which might, perhaps, involve an increase in their number, even regular Law Reporters will encroach on the province of the newspaper or the legal periodical by endeavouring to give a tolerably complete history of each case. Besides, condensation notoriously takes a great deal more time than Reporting in full, and no salary that can be offered by the Council is likely to secure the undivided services of an experienced barrister. Private practice is a dangerous rival of Law Reporting, and the same motives which have hitherto delayed the preparation of Reports will continue

to operate more or less until the Reporter becomes an officer of the Court. Nothing but an exclusive privilege of citation would place the new system altogether above the deteriorating influences of competition, and nothing but exclusive devotion to the business of Reporting would insure unfailing punctuality. At the same time, this is a step in the right direction, and bids fair to effect a considerable improvement in the neglected art of Coke. It will be a pure gain to the legal profession if a complete set of Reports, superior to any now published, can henceforward be purchased by a five-guinea subscription. It will probably help to "simplify and purify the sources of the law," by exercising an insensible pressure on the Judges and subjecting Reporters to proper control. It may thus indirectly facilitate the process of digesting, which, as most reformers admit, must precede that of codifying, while it can hardly fail to diminish the glorious uncertainty which proceeds alike from the unscientific spirit of our Common Law and from ambiguities in the judicial exposition of it.—*The Times*, Nov. 7, 1865.

An article also appeared in "The Standard" of the 7th of November, 1865, of which the following is a copy :—

The legal profession is suffering from an *embarras de richesses*. Its members are encumbered by redundant provision for their convenience, and perplexed by the endeavours which learned brethren have made for their accommodation. In the days when a decent law library would hardly fill a small pair of bookshelves our Judges may have had to frame their decisions pretty much at their own discretion. The term *in gremio judicis* had then a real meaning, for ancient statutes were not very lengthy, and seldom attempted to do more than lay down in outline a rule which the Judges were to apply in detail, and which the Crokes, and Lofts, and Yelvertons reported with a brevity which was always quaint and not unfrequently obscure. But that state of happy simplicity has long since passed away. Successive generations of lawyers, each one more laborious and painstaking than its predecessor, have enshrined the arguments of the Bar and the deliverances of the Bench in ever issuing and continually multiplying volumes. Even in the days of the old Reporters, who were satisfied with leaving two or three volumes of decided cases, whose collection had been the work of their lifetime, it was a common thing for them to apologise for adding yet another to the many existing volumes of recorded judicial decisions. But of late years, though the apology has been omitted, the evil has gone on increasing to an extent positively alarming. Every barrister in want of practice, every law publisher in quest of business, has started his own special and particular set of Reports. Every Court has had its

own so-called official set prepared with considerable care, which the Judges of the Court have sanctioned by allowing the Reporters to have access to their written judgments and other papers. Reports of this class have been issued with great deliberation, and generally a year or so after the decisions had been given. But the constant demand for rapid publication has brought into the field a number of rivals whose claim to professional favour rests mainly upon the short interval at which the latest decisions were printed and published, so as to keep the hardworking lawyer continually abreast of the judge-made law. Of course, both of these classes have their peculiar value, and those interested in their publication can easily make out a case in their favour. Indeed, they have done this only too successfully. They have won for themselves a sufficient amount of support to give their proprietors a vested interest in their continuance, and they have thus been enabled to add to the treasures of legal lore in a degree which render it impossible for any man to keep pace with them. The volumes of Reports already published number thirteen or fourteen hundred, and to this formidable aggregate thirty or forty are every year added. Nor has the increase taken place in numbers only. There has been a growing tendency to make every individual Report more copious, and of necessity more lengthy, than was of old time deemed desirable, so that the library of a lawyer in full practice requires to be continually recruited with a mass of Reports, to read which becomes every year a more hopeless task.

It is not very wonderful that the Profession have got somewhat weary of this state of things. That judicial decisions should be accurately reported and readily cited are matters of public necessity, but the indefinite multiplication of Reports serves no purpose but that of private interest. The existing Law Reports are nothing more than commercial speculations, and have only obtained a *quasi* official character by favour of the learned Judges, though it is but fair to admit that this amount of recognition has been accorded on account of the manner in which the gentlemen engaged upon them have performed their duties. But this only mitigates and does not remove the evil of enshrining the decisions of to-day, by which future Judges are to shape their legal course, in such a multitude of volumes. And then the cost becomes a serious consideration. As the law stationer in "Bleak House" said, not to put too fine a point on it, everything connected with the law is rather dear, and assuredly law books are no exception to the rule, though, perhaps, the public may contemplate the spectacle of a publisher fleecing a lawyer with no very great dissatisfaction. The Profession, however, take a different view of it. They have, for a long time, been considering proposals for mitigating the evil, and they have now propounded a scheme which seems to have

many of the essentials of success. They contemplate publishing a set of Reports, which shall give, with promptitude and accuracy, the most important cases in all the Courts. The Reporters are to be barristers selected by the Judges, who are to have access to all papers at the disposal of those learned functionaries. Unwritten judgments are to be revised before publication, and the Reporting staff is to be recognised "as exercising a professional privilege for a public object, under responsibility to the Judges, the Bar, and the Profession at large." In the first instance, and as far as possible, the work is to be done by the present official Reporters. It may be looked upon as a beginning of the end of the evils hitherto complained of, that the arrangements thus far made will ensure the discontinuance of ten sets of Reports hitherto published separately, but which will now become merged in publications of the Council of Law Reporting, their editors having accepted appointments on the staff of the new organisation.

The commercial difficulty has hitherto been the principal obstacle to the success of any scheme of this kind originating exclusively with the Profession. The printers and publishers have been able to hold their own against the lawyers, and they prophesied a similar fate for the present endeavour. But there would seem to be some reason to think that this has now been surmounted. A Government guarantee was in the first instance hoped for, but this has very properly been refused, as it would be manifestly unfair to take the public money in support of what is, after all, only a private speculation in which a great number of persons are interested. But failing to get help from the funds of the nation the gentlemen of the long robe have fallen back upon their own. The principle of a guarantee fund, which has done so much for Industrial Exhibitions, has been resorted to by those who aim at publishing judicial decisions. Its object is to provide for the salaries of the Editors and Reporters, and this has been accomplished to an extent sufficient to justify the Council in commencing operations. They have arranged with Messrs. Clowes & Sons to take the risk of publication at an agreed rate of commission, and the agreement is believed to be sufficient to place the undertaking on a perfectly sound financial basis. Whether this is so time will show, but it is a matter in which the public are only indirectly concerned. It would certainly be somewhat discreditable to a large and influential body like the Bar, whose members are commonly supposed to be rather too sharp for ordinary men to deal with, were they to fail in this attempt to manage their own professional affairs. But we must own that we desire the success of the scheme on public grounds. Considering how greatly our laws are modified and influenced, nay, in some cases virtually repealed, by the

decisions of our Judges, we hold it as of the last importance that those decisions should be accurately and carefully reported. Granting that these essentials have been already attained there remains the further desideratum—that it should be in the power of every practitioner to obtain the record of these decisions in a form compact and accessible, at a moderate price, and in reasonable time. Hitherto as the Council complain, the more authoritative series have only been procurable "separately, at irregular, and sometimes long protracted intervals, and at immoderate cost." We trust that experience will verify the hope they express, that by subjecting one of the most important privileges of the Profession to the restrictions which the public interest requires, they may facilitate the administration of justice by simplifying and purifying the sources of the law, and ultimately leading to important amendments in the law itself.—*The Standard*, Nov. 7, 1865.

An article also appeared in "The Spectator" of the 18th of November, 1865, of which the following is a copy:—

THE NEW SCHEME OF LAW REPORTING.

The establishment during the present term, for the first time in our legal history, of a consolidated system of Law Reporting at Lincoln's Inn and Westminster, under the patronage of the Lord Chancellor, and with the hearty concurrence of the Bar, is too important an event to be allowed to pass without notice. It is a striking instance of the success which sometimes attends the disinterested energy of a single man. It is only two years ago that Mr. Daniel, in a printed letter addressed to the Attorney-General, and through him to the Profession and to the public, seriously called attention to the evils of the existing position of the Law Reports. The subject was not new. It had been taken up by the Law Amendment Society nearly twenty years before. But it required some one of acknowledged position and force of character to quicken into life the theories of the Law Society. This service has been rendered by Mr. Daniel. Sir Robert Peel's magnanimous tribute to Cobden was not more deserved, than that which the Profession is willing to pay to the single-minded and judicious labours of Mr. Daniel. The new scheme is the personification of one simple idea, namely, that the machinery by which case-law is preserved ought not to be the result or the creature of commercial enterprise, but should be supplied and controlled by the Bar. Law publishers may undersell each other in other ways, but they ought not to have the opportunity of directing the manufacture of law. When it is remembered to how great an extent our jurisprudence is composed of judicial

decision, the great importance of providing means for its accurate preservation will not be denied. A few words will explain what has been the system of Law Reporting in times gone by and what is its present condition. Plowden says, "That in early times four Reporters were appointed to commit to writing, and truly to deliver, as well the words spoken as the judgments and reasons therefor given in our Courts of Westminster, who conferred all together at the making and setting forth any book of Reports." The result of this system was the production of the "Year Books," which contain in clear and concise language, what has been termed, in contradistinction to statute law, the *lex non scripta*, from the reign of Edward I. till the latter part of the reign of Henry VIII. These reports are admirable records, so far as they go, of judicial proceedings. They give a short statement of the case, the leading points in the arguments of counsel on each side, and the decision and reasons of the Judge. They were not, however, generally circulated among the Profession. They were for the most part preserved in manuscript. Some indeed have been printed for the first time within the last few years. It is not known by whom the four Reporters spoken of by Plowden were appointed, although judging from the recital contained in the letters patent appointing two Reporters, which Bacon induced James I. to seal, to the effect that it was thought "good to revive and renew the ancient custom of appointing some grave and learned lawyers to attend in Court for the reporting of judgments and resolutions of law," it is probable that they were appointed by the Crown. If this were so, it would go far to explain why in Lord Bacon's time they had ceased to be efficient, and why the new Reporters appointed under his auspices also soon fell into disrepute. The system produced sinecure offices. It lacked the responsibility which would necessarily have attached to the service if the master had been not the Government, but the Profession. Since the time of Lord Bacon, the record of the cases heard and determined in the Courts of Law and Equity has been left to a great extent to chance. Whole years might be pointed out in comparatively modern times when the judicial decisions in some of the Courts were almost unreported. The record of what, without much of poetic licence, has been described as

"That codeless myriad of precedent,
That wilderness of single instances,
Through which a few, by wit or fortune led,
May beat a pathway out to wealth and fame."

was left to depend upon the capital of law publishers, or the diligence of the barristers who have been employed by the publishers for the purpose of reporting what takes place in Court. It is true that some

of the Judges were accustomed to revise the notes of the so-called "authorized" Reports, but the result of this process often afforded an illustration of the maxim that "an ox and an ass should not plough together." Great names are indeed to be found among the Reporters, but in more recent times the reputation as lawyers of many of the "authorized Reporters" has been such that they would have stood no chance whatever for the office under a system of open competition. The effect of delay and incapacity in these quarters was more than negative. It gave rise to new schemes of Law Reporting. Advantage was taken of that privilege existing in the Courts which permits any barrister, whether engaged as counsel in the case which is under consideration or not, as *amicus curiæ*, to inform the Judge of any previous decision upon the subject of the case within his own knowledge. The respect paid by the Bench to the Bar has always insured the respectful reception of such communications. The idea was accordingly conceived by the proprietors of a periodical law paper that if concise and speedy Reports could be produced, authenticated by the name of a barrister, these would receive at any rate as much consideration in the Court as was paid to the oral statements made by the *amici curiæ*, and that thus the grievances arising from the existing system of authorized Reporters would be remedied. The idea was carried out, and in course of time these Reports were allowed to be cited as authorities as freely as the more privileged series. The remedy, however, was worse than the disease. A spirit of free trade, and also, it must be said, of wholesale piracy, sprang up, and at the end of last term there were no less than 125 barristers daily employed in recording these solemn legal determinations, which according to an old legal maxim, which is by no means a legal fiction, every one is expected to know. Of course it is absurd to suppose that the Profession could keep pace with this mass of judicial reproduction, yet it was felt to be dangerous to neglect these Reports. That for years the Profession should have borne such a system patiently would be truly astounding, were it not for what Lord Westbury has well called "the blunted sensibility of lawyers to the evils with which they have been long familiar."

The public press had from the first treated the efforts of the Bar in a more generous and liberal spirit than any of those publications which assumed to themselves the function of representing the interests of the Legal Profession.

The first parts of each of the Common Law and Equity Series of the Reports were prepared and ready for publication on the 1st of January, 1866, and on that day Messrs. Clowes sent the first copies to me as Vice-Chairman. On examining them I was

quite satisfied with the manner in which the work of the several parties had been done, and so expressed myself to Messrs. Clowes. I afterwards went to their publishing office, 51 Carey Street, to see the arrangements they had made for delivery and distribution, and with these I was satisfied. From that day the ultimate success of "The Law Reports" was to me no longer doubtful, and I have not been disappointed. I may here mention a little incident which I think worthy of being recorded. Lord St. Leonards had become a subscriber to the Reports, and the monthly parts for January, February and March, 1866, had been punctually delivered to him. The adjourned Council of the Benchers of Lincoln's Inn was held on the 14th of March, 1866, Lord St. Leonards was there, Mr. Amphlett and I were there also, and we were talking together. Seeing us, his Lordship came up and addressing himself to me, said "I owe you, Mr. Daniel, thanks for those 'Law Reports,' I have found the advantages of them as compared with the old authorized Reports upon which I had formerly to depend, and I owe an apology also for the attempt I made at the Council in January, 1865, to stop the Bar Scheme. I did not then know that the Scheme had been adopted by the Bar." I told his Lordship that no apology was necessary, and that thanks were not due to me alone, I was only one of a body who had laboured with me; but if any one was more than another entitled to thanks it was Mr. Amphlett, who was chairman of the Committee and presided at every meeting. The conversation ended agreeably, and Lord St. Leonards continued a supporter of the Reports until his death. In the month of July, 1866, Sir FitzRoy Kelly was raised to the bench as Lord Chief Baron of the Exchequer, and by thus becoming a member of Serjeants' Inn he ceased to be a member of Lincoln's Inn, and thereby vacated his seat as a member of the Council of Law Reporting. At a special Council of the Benchers of Lincoln's Inn held on the 26th of July, 1866, upon a motion made by me, it was ordered that Sir Roundell Palmer, Q.C., be appointed a member of the Council of Law Reporting in the place of Sir FitzRoy Kelly who had ceased to be a member. And at a meeting of the Council of Law Reporting held on the 31st of July, 1866, I, as Vice-Chairman, reported the resignation of

Sir FitzRoy Kelly. And the resolution of Lincoln's Inn appointing Sir Roundell Palmer a member of the Council in the place of Sir FitzRoy Kelly being read, it was moved by me and seconded by Mr. Williams that Sir Roundell Palmer be appointed permanent Chairman of the Council; and I may here state that he continued to preside as Chairman until his acceptance of the Great Seal in 1872. At the same meeting it was moved by me and seconded by Mr. Giffard, and resolved, that the congratulations of the Council be offered to Sir FitzRoy Kelly on his elevation to the office of Lord Chief Baron of Her Majesty's Court of Exchequer at Westminster, and that the thanks of the Council be conveyed to Sir FitzRoy Kelly for his assiduous services as a member of their body, and for his unremitting labour and uniform courtesy as their permanent Chairman. This resolution was communicated to the Lord Chief Baron by the Secretary and acknowledged by his Lordship in a letter dated the 4th of August, 1866. At a meeting of the Council of Law Reporting held on the 30th of October, 1866, Sir Roundell Palmer in the chair, the letter from Sir FitzRoy Kelly was produced, and, as entered on the minutes, is as follows:—

The Chauntry, Ipswich,
August 4, 1866.

MY DEAR MR. HOPWOOD,

I beg to acknowledge with many thanks the resolution of the Council of Law Reporting which you have been good enough to convey to me, and I am much gratified by their approval of my humble endeavours (in which I have but seconded the great and successful efforts of Mr. Daniel) to support and promote an undertaking which I believe will prove of lasting and incalculable benefit to the legal profession and the administration of the Law. With all good wishes to the great and good work in which the Council are engaged.

I remain, faithfully yours,

FITZROY KELLY.

At the same Council I presented a letter addressed to me as Vice-Chairman by Mr. Hurlstone, of which the following, as entered on the minutes, is a copy:—

3 Harcourt Buildings, Temple,
10th October, 1866.

DEAR SIR,

I am informed that the funds of the Law Reports are now sufficient to pay the Reporters their full salaries. If that be so, the

obstacle which prevented my joining them is entirely removed, and I am therefore unwilling to prolong a conflict which has always been unpleasant to me.

I remain, yours truly,

W. T. S. Daniel, Esq.

E. T. HURLSTONE.

I wished that Mr. Hurlstone should withdraw the letter, as he knew that Reporters for the Exchequer had been appointed; but he did not—and it was my duty as Vice-Chairman to lay his letter before the meeting. Upon the letter being read, it was ordered that the Secretary do write to Mr. Hurlstone, stating the regret of the Council that existing arrangements prevent them from accepting his proposal.

At the same Council I presented a letter dated the 26th of October, 1866, from the Solicitor-General for Ireland, addressed to me as Vice-Chairman. I should state that I had for some time previously been in communication with some of the leaders of the Irish Bar upon the subject of Law Reporting, and had given them all the information in my power as to the system established here, and they had resolved to establish a Council of Law Reporting for Ireland similar to ours. The letter from the Irish Solicitor-General, which I presented, and which was ordered to be entered on the minutes, is as follows:—

5 FitzWilliam Place, Dublin.

26th October, 1866.

DEAR SIR,

As Chairman of this day's meeting of the Council of Law Reporting in Ireland, I have been deputed to write to you on their behalf. I have to thank you personally for the trouble you have so kindly taken for us, and also to express our obligation to your Council for the assistance already rendered to our undertaking. I am directed to request of your Council the favour of giving further publicity to our project among your subscribers by drawing their attention to it in any way that may be most convenient to you, and also, if the opportunity offer, to bring it to the notice of the Benchers of your Inns of Court and your other legal bodies. A copy of our Scheme has been forwarded to each of your Judges and Law Officers, and I enclose you one herewith and also a copy of our Circular. Hoping that you will excuse this trouble, I have the honour to remain,

Your faithful servant,

W. T. S. Daniel, Esq., Q.C.

H. E. CHATTERTON.

Upon the letter being read, it was ordered that the Scheme of the Irish Bar Committee be published in "The Weekly Notes," and that every assistance be given to further the object of the Scheme. The Scheme was published in "The Weekly Notes," and I was authorized to inform the Solicitor-General, Sir H. E. Chatterton, of the resolution come to by the Council, and I did so.

A meeting of the Council of Law Reporting was held on the 22nd of December, 1866. The subscriptions to the Law Reports having amounted to a sum sufficient to meet all the liabilities of the Council, and to render any further guarantee unnecessary, it was ordered, That the Honourable Societies of Serjeants' Inn and Gray's Inn be again invited to send representatives to the Council; and that as the original number of the Council in the event of a certain guarantee being given, but which was not required, was to consist of twelve members, it was desirable that that number should be retained; and for this purpose it is further resolved that the Societies be requested to send two members each to the Council instead of one, as formerly proposed.

The importance of this resolution as well as its object was apparent, and it was also plain that the resolution was not in strict accordance with either the Bar Scheme or the previous resolution of the Council. And it was passed at a meeting without previous notice, and when only three members besides myself were present. These three were Mr. Giffard, Mr. Forsyth, and Mr. Cookson. The desire to present to the Profession and the public a complete Council was the inspiring motive, and every member of the Council, as soon as informed of the resolution, heartily approved of it. It was equivalent to a Christmas invitation to peace and goodwill. Happily it was so treated! At a Pension of Gray's Inn held on the 16th of January, 1867, "It was ordered, That the undermentioned Masters of the Bench, viz., James Barstow, Esq., and Lewin Taverner, Esq., be and they are hereby appointed members to represent this Society on the Council of Law Reporting. Daniel Boswood, Steward."

This resolution was forwarded by the Steward to the Secretary of the Council of Law Reporting.

The first meeting of the Council in 1867 was held on the 1st

of February, and was numerously attended—Sir Roundell Palmer in the chair, and Mr. Barstow and Mr. Taverner attended and were welcomed as Representatives of Gray's Inn. I, as Vice-Chairman, was then requested to prepare the Annual Report for the year 1866, to be submitted to the next meeting. The Report was not then presented, and was ordered to stand over until it was seen whether Serjeants' Inn would or would not send representatives to the Council.

At a meeting of the Council held on the 30th of April, 1867, Sir Roundell Palmer in the chair, a letter was read from the Treasurer of Serjeants' Inn dated the 16th of April, 1867, stating that the Lord Chief Baron had given notice of his intention to bring forward the consideration of the question whether the Society should send Representatives to the Council on the first day of next Trinity Term.

On the 28th of May, 1867, the Secretary received from the Treasurer of Serjeants' Inn a letter addressed to him, of which the following is a copy :—

1 Serjeants' Inn, Chancery Lane,
28th May, 1867.

MY DEAR SIR,

I have the satisfaction to inform you that at our "Green Cloth" last evening, the Lord Chief Baron's motion, that this Society shall send two Representatives to the Council of Law Reporting, was, I may say, almost unanimously agreed to. Our Representatives are, Mr. Serjeant Hayes and Mr. Serjeant Pulling. Should the Council require further explanation, be pleased to address me as above.

The Secretary to the Council
of Law Reporting

E. S. BAIN,
Treasurer.

The next meeting of the Council was held on the 17th of June, 1867. I was in the chair at the sitting of the Council, and had the pleasure, with the other members then present, of welcoming Serjeant Hayes and Serjeant Pulling on their attendance as Representatives of Serjeants' Inn. The letter of the Treasurer of Serjeants' Inn was read and ordered to be entered on the minutes. Very shortly afterwards Sir Roundell Palmer came in, and he took the chair in my place; and, after other business had been disposed of, it was ordered that the First Annual Report, already prepared by me, be, with some amendments and

additions then made, adopted by the meeting and signed by the Chairman. This was done, and the following is a copy :—

COUNCIL OF LAW REPORTING.

Members of the Council.

Chairman—SIR ROUNDELL PALMER, KNT., M.P., Q.C.

Vice-Chairman—W. T. S. DANIEL, ESQ., Q.C.

Ex-Officio Members.

THE ATTORNEY-GENERAL, SIR JOHN ROLT, KNT., M.P.

THE SOLICITOR-GENERAL, SIR J. B. KARSLAKE, KNT., M.P.

THE QUEEN'S ADVOCATE, SIR ROBERT PHILLIMORE, KNT.

Elected Members.

MR. SERJEANT HAYES

MR. SERJEANT PULLING

} Serjeants' Inn.

SIR ROUNDELL PALMER, KNT., M.P., Q.C.

W. T. S. DANIEL, ESQ., Q.C.

} Lincoln's Inn.

WILLIAM FORSYTH, ESQ., Q.C.

GEORGE MARKHAM GIFFARD, ESQ., Q.C.

} Inner Temple.

T. W. GREENE, ESQ., Q.C.

JOHN GRAY, ESQ., Q.C.

} Middle Temple.

JAMES BARSTOW, ESQ.

LEWIN TAVERNER, ESQ.

} Gray's Inn.

WILLIAM WILLIAMS, ESQ. (Firm—Messrs. Currie & Williams), Lincoln's Inn Fields

W. S. COOKSON, ESQ. (Firm—Messrs. Clayton, Cookson, & Wainewright), 6 New Square, Lincoln's Inn

} Incorporated
Law Society.

Secretary—JAMES THOMAS HOPWOOD, ESQ., 3 New Square,
Lincoln's Inn.

FIRST REPORT.

THE Council of Law Reporting, in submitting their First Report, have much satisfaction in being able to state that their proceedings hitherto have been attended with success greatly beyond what was anticipated at the outset. In the endeavour to establish a set of

Reports to be prepared and published solely in the interest of the Profession and the public, and without any regard to private advantage or commercial profit, it was to be expected that many difficulties would have to be encountered. The novelty of such a design was, with some, an objection which impeded all consideration of its merits; others disbelieved that such a work could be undertaken without a latent expectation of private gain, which time would soon expose; while the resistance of those whose commercial interests would be prejudiced by its success combined, with these and other elements of opposition, to create an array of difficulties which could only be surmounted by resolute perseverance in the endeavour to accomplish a work believed to be of great public utility. The Council having the Bar Scheme for their guide, have found in a liberal interpretation of its provisions a comparatively easy solution of the chief difficulties they have had to encounter; and they desire to attribute, to a great extent, the amount of support and confidence which they have from the first received, and still continue to receive, from the Judges, the Bar, and the Profession at large, to the judicious and practical suggestions embodied in that Scheme—the result of the assiduous and disinterested labours of the Bar Committee, continued for a period of six months, during the busiest part of the legal year.

A short statement of facts, many of them already known, will serve to explain the difficulties encountered and the progress effected.

The first step required by the Bar Scheme was to secure the concurrence of the Inns of Court and the Incorporated Law Society in the formation of the Council, as a body representing the interests of the various branches of the Profession, to which the control and management of the undertaking was to be entrusted. Endeavours were at once made to attain this object. The Law Officers of the Crown, who were proposed as *ex-officio* members, have from the first, and throughout the several changes which have since occurred in the distinguished individuals filling those high offices, given their willing and powerful support to the Council, by identifying themselves with its proceedings and, when occasion required, assisting by attendance and advice. The Honourable Societies of Lincoln's Inn, the Inner Temple, and the Middle Temple, and the Incorporated Law Society, readily consented to concur, and at once appointed the proposed number of representatives; but Serjeants' Inn and Gray's Inn, for reasons of prudence and delicacy, at first declined co-operation. It is, however, gratifying to be enabled to state that recently both those learned societies, having had the opportunity of witnessing the proceedings of the Council, the manner in which the undertaking has been conducted, and the amount of support it was receiving from the Profession, have signified their adhesion to the Scheme, and appointed

representatives to the Council, thus completing the proper constitution of the body of individuals to whose management and control it had been proposed to entrust the preparation and publication of the Reports of the judicial decisions in our Superior Courts, which constitute the Case Law of this country. It only now remains to obtain for this body at a proper and convenient season a Charter of Incorporation, as suggested by the Bar Scheme, the grant of which the Council hope the Lord Chancellor and others in authority may deem it for the public interest to sanction and facilitate.

As the Reports to be established were intended to be self-supporting, the attention of the Council was first directed to laying the foundation of prudent financial arrangements, and in these they found useful suggestions in the Bar Scheme. Having failed to receive—and they could not reasonably expect to receive—any encouragement or support from the Law Publishers, whose interests were supposed to be bound up in a system of Law Reporting which it was the object of the Bar Scheme, in the interest of the public, entirely to change, the Council were left at liberty to entertain a proposal which was made to them by the old-established printing firm of Messrs. W. Clowes & Sons to undertake the printing, publication, and distribution of the Reports upon terms which absolved the Council from all pecuniary liability, while it left to them the receipt and application of all moneys paid for subscriptions. This proposal was carefully considered; and in the discussion and settlement of its terms the Council were met by Messrs. Clowes in a spirit of prudent liberality, which they desire to take this opportunity of acknowledging. And the experience which the Profession have now, for eighteen months, had of the manner in which Messrs. Clowes have done their part in producing a work which, as regards paper, type, printing, style, and general regularity of publication and distribution, is almost all that could be desired, induces the Council to believe that their acceptance of Messrs. Clowes' proposal was not only justifiable but judicious.

The basis of financial arrangements being thus laid in the contract with Messrs. Clowes, the next step to be taken by the Council was the selection of the Editors and Reporters. In this the Council followed both in letter and spirit the provisions of the Bar Scheme, by offering an appointment to every member of the Bar who was then engaged as Reporter in the fourteen then existing series of authorized Reports. With only three exceptions the offer was accepted in a spirit of generous confidence.

It was with great regret that the Council met with refusals from Mr. Beavan, in the Rolls Court, Messrs. Best and Smith, in the Court of Queen's Bench, and Messrs. Hurlstone and Coltman, in the Court of Exchequer; and although the Council had no right or desire to

endeavour to control the conduct of gentlemen who were the sole judges of what was best for their own interests, they nevertheless thought that they were only properly endeavouring to promote the public beneficial object of the Bar Scheme in attempting, by personal communications and explanations, to remove objections and obtain assent. That these attempts failed the Council at the time regretted; and, so far as the subsequent success of the Scheme may have been productive of loss to any individual dissentient, their regret remains. Upon the appointment of Mr. Beavan in June, 1866, to the office of Examiner in the Court of Chancery, his Lordship the Master of the Rolls immediately communicated his unsolicited approval of the Reporters who had been appointed by the Council to the Rolls Court—an approval which his Lordship was pleased to state had been withheld only out of a due regard to the interests of Mr. Beavan. Thus, with the exception of completing arrears, the Profession will for the future be relieved from the unnecessary burden of a separate series of authorized Reports for the Rolls Court. At the commencement of the present year the series of Reports in the Exchequer, furnished by Messrs. Hurlstone and Coltman, ceased of their own accord, and at the same time an attempt which had been made to establish a separate series of Reports in the Common Pleas by Messrs. Harrison and Rutherford, in lieu of the series of Common Bench Reports—which, by the acceptance of Mr. Scott of an appointment under the Council, had merged in the Law Reports—was discontinued, and the result is that out of fourteen separate sets of authorized Reports, which existed up to the end of Trinity Vacation, 1865, one only now remains—that of Messrs. Best and Smith, in the Queen's Bench; and the Council feel they are but giving utterance to the wishes of the Profession in expressing a hope that some opportunity may soon present itself for effecting, upon satisfactory terms, a fusion of that series with "The Law Reports." And here it may not be out of place to observe that out of the four Weekly Serial Reports which previously existed, "The New Reports" were abandoned early in the year 1866, and that at the beginning of the present year, 1867, "The Jurist" and its Reports ceased to be published. Of this last work, conducted as it had been for nearly thirty years with ability and spirit, the Council would desire to express their regret that the voluntary sacrifice of a work which had rendered such good service to the Profession should have been preferred and resolutely effected without any communication with them.

Despite the disappointment occasioned by the few refusals they received, the Council had little difficulty in completing their selection of the gentlemen whose names are familiar to the Profession as Editors, Secretary, and Reporters. In this selection the Council were

free from the usual embarrassments of patronage, and they believe that the services of those gentlemen, as hitherto rendered, while inviting the sharp but candid criticism of the Profession, have secured no ungrudging expression of its general satisfaction and approval. To Sir FitzRoy Kelly, who filled the office of Chairman of the Council from the commencement until his elevation to the Bench as Chief Baron of the Court of Exchequer, the warmest acknowledgments are due for the unremitting attention and fostering advocacy with which, from the first and throughout, he has promoted the Scheme, and for the interest with which he still regards it. The Council bear constantly in mind the provision of the Bar Scheme, which empowers them, if they deem it desirable, to make arrangements for the discontinuance of any existing series of Reports by compensation out of surplus profits; and it would be a satisfaction to them to exercise that power if a fitting opportunity should arise, with the full consent of the parties to be affected by it. But the judgment and wishes of the Profession, as manifested by the support awarded to the Council, are the best if not the only means by which any such result could be accomplished.

The Subscribers for the year 1866 exceeded 4000 in number; and the ready adhesion of so many members of the Profession dispersed throughout the United Kingdom, India, the Colonies, and even the United States of America, may be accepted as evidence that the system of Reporting proposed by the Bar Scheme was adapted to supply a real want of the Profession and the public, and that the arrangements of the Council have been on the whole satisfactory.

The amount of Subscriptions having doubled the estimate suggested by the Bar Scheme, the Council felt themselves justified in at once giving effect to the suggestion of the Scheme for the establishment of a Weekly in addition to the Monthly Series. And with this view they established "The Weekly Notes," which were and are intended only to inform the Profession of the current decisions of the Courts; and being necessarily prepared in haste, and without the opportunity of correction by careful reference to papers, and without judicial revision, are not intended or adapted for citation as authority, though useful for information. In further addition to "The Weekly Notes" the Council have also supplied, under a special arrangement with the Queen's Printers, an authorized edition of "The Statutes," which are published in parts quickly after the passing of the Acts. And thus the Council have been enabled to apply the funds hitherto liberally supplied by the Profession in furnishing for the prepaid annual Subscription of five guineas a complete body of the Case Law and Statute Law of the year:—the Statute Law in an authorized form, receivable as evidence in all Courts and places; the Case Law in a form which, possessing the advantages to a greater extent than ever heretofore realised, of

skilful preparation, careful editing, and judicial revision, is calculated to acquire and maintain its recognition by the Judges, the Bar, and the entire Profession as the standard of authority.

The Council, however, beg to remind the Profession that the continued success of the undertaking thus far secured depends entirely upon their voluntary approval and support; and as the Council have not hitherto felt themselves justified in applying the funds entrusted to them in expensive advertisements, and employ no agents to canvass for or collect Subscriptions, they hope that each Subscriber will feel it for his interest to support them by seasonable advocacy of the Scheme amongst his professional brethren, by the friendly communication of whatever errors or deficiencies he may discover, and of well-considered suggestions for amendment—so that the work may continue to be conducted in the spirit in which it has been commenced, as a work of public utility, tending to the improvement of the Law and the advancement of the administration of justice.

The accounts for the year ending the 31st of December, 1866, have been duly audited; and after taking credit for the stock on hand, at the Subscription price, the expenses of the year, including the additional cost of "The Weekly Notes" and "The Statutes," and payment in full of the salaries of the Editors, Secretary, and Reporters have been met. The number of copies printed of "The Law Reports" and "Statutes" for 1866 was 5000; of these some copies still remain on hand. But "The Weekly Notes" are out of print. And although Subscriptions for the year 1866 are still being accepted by the Council, so that the remaining numbers on hand may ere long be exhausted, the Council have no intention at present of increasing the Subscription for those numbers.

By Order of the Council,
ROUNDELL PALMER,
Chairman.

BENCHERS' READING ROOM, LINCOLN'S INN.
June 17, 1867.

On the 21st of March, 1867, I was appointed by Lord Chancellor Chelmsford, County Court Judge of Circuit No. 11, which comprised Bradford and Keighley, as well as some other places in the West Riding of Yorkshire, and Burnley, Colne, and other places in Lancashire. After a very short experience I found a strong desire manifested on the part of the public, the profession, and suitors to increase the usefulness of the Courts by frequent resort to them—a desire which I was not unwilling to encourage. And I found that this encouragement would be most effectually given

by my permanent residence in the Circuit. I therefore made the necessary arrangements, and in July, 1867, left London and took up my abode in the neighbourhood of Skipton-in-Craven—a place which was on my Circuit, and conveniently situated, being about equidistant from Bradford and Burnley—the two extremes. This arrangement rendered it difficult for me to attend the meetings of the Council of Law Reporting and discharge my duties of Vice-Chairman as regularly as I had previously done, though I made it my duty to attend whenever the exigencies of my Circuit left me at liberty to do so. But any shortcomings on my part were kindly overlooked by the Chairman and the other members of the Council; and I should be ungrateful if I did not record the zeal and earnestness with which Mr. Serjeant Pulling, from the time he joined the Council, devoted himself to to the welfare of the Scheme, which, on joining, he found in prosperous circumstances, with every prospect of continuance and improvement under judicious management.

The time having arrived for the preparation of the Annual Report for 1867, at a meeting of the Council held on the 30th of April, 1868, from which I was unavoidably absent, Sir Roundell Palmer in the chair, the subject of the preparation of the Annual Report for 1867 was discussed, and it was resolved that the Secretary be requested to communicate with the Vice-Chairman and to ask him if he would kindly undertake the preparation. And at the same meeting it was resolved that a Committee of General Supervision be appointed to inquire and report to the Council on any matters relating to the preparation and publication of the Reports, and that the same do consist of the Chairman, the Vice-Chairman, Mr. Cole, Mr. Serjeant Pulling, and Mr. Cookson. Both these resolutions were communicated to me by the Secretary, and I undertook to prepare the Annual Report for 1867 as requested, and accordingly prepared it. And, at a meeting of the Council held on the 30th of July, 1868, from which I was also unavoidably absent, Sir Roundell Palmer in the chair, the Annual Report for 1867 was discussed. The Report prepared by me as Vice-Chairman was laid before the meeting, and with certain alterations was adopted, and it was resolved that the Report with the Financial Statement be published in "The

Weekly Notes," and circulated among the Profession generally.
And the following is a copy:—

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Vice-Chairman—W. T. S. DANIEL, Esq., Q.C.

Ex-Officio Members.

THE ATTORNEY-GENERAL, SIR J. B. KARSLAKE, KNT., M.P.

THE SOLICITOR-GENERAL, SIR W. BALIOL BRETT, KNT., M.P.

THE QUEEN'S ADVOCATE-GENERAL, SIR TRAVERS TWISS, KNT.

Elected Members.

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} Serjeants' Inn.

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WILLIAM FORSYTH, Esq., Q.C.

H. WARWICK COLE, Esq. Q.C.

} Inner Temple.

T. W. GREENE, Esq., Q.C.

JOHN GRAY, Esq., Q.C.

} Middle Temple.

JAMES BARSTOW, Esq.

LEWIN TAVERNER, Esq.

} Gray's Inn.

WILLIAM WILLIAMS, Esq. (Firm—Messrs. Currie & Williams), Lincoln's Inn Fields

W. S. COOKSON, Esq. (Firm—Messrs. Cookson, Wainwright, & Co.), 6 New Square, Lincoln's Inn

} Incorporated Law Society.

Secretary—JAMES THOMAS HOPWOOD, Esq., 3 New Square,
Lincoln's Inn.

ANNUAL REPORT FOR 1867.

THE COUNCIL OF LAW REPORTING submit the following Report to the Subscribers to "The Law Reports," and to the Legal Profession. The Report for 1866 was published on the 17th of June, 1867, and the present Report has been delayed in consequence of the examination of

the accounts by the auditors appointed by the Editors and Reporters pursuant to the Bar Scheme, and other unavoidable circumstances.

FINANCIAL POSITION.

An account of the receipts and expenditure for the years 1866 and 1867 is appended to this report.

RECEIPTS.—The receipts for prepaid subscriptions in 1866 amounted to £20,334 18s.; in 1867 to £21,860 16s. 4d. The average of the two years was £21,097 17s. 2d. During these two years the further sum of £503 16s. 7d. was received for interest on temporary investments; these investments consisted of cash to the credit of the Council at the Union Bank, which was placed on deposit at the current rates of interest. Credit is also taken for the sum of £1255 5s. 1d; this is the amount of the net balances up to the 31st of December, 1867, then due from the agents of Messrs. Clowes in India, the Colonies, and America, and most of which are accounted for by Messrs. Clowes as since received. The total amount thus realised during the years 1866 and 1867 was £43,954 16s. The sums received for prepaid subscriptions during the current year up to the 30th of June, 1868, amount to £21,102 6s., and this sum will be increased by the amount which will be due from the agents of Messrs. Clowes in India, the Colonies, and America at the end of the year, and also by such further sums as may be received for prepaid subscriptions up to the 31st of October next (the prepaid subscriptions for 1869 will commence on the 1st of November). Thus the receipts for prepaid subscriptions during the present year, up to the 30th of June, 1868, exceed those for the entire year, 1866, and also the average of the two entire years—1866 and 1867. Upon the average of the three years the actual receipts from prepaid subscriptions have exceeded £21,000 per annum. This sum is exclusive of moneys received and receivable through Messrs. Clowes' agents in India, the Colonies, and America. The Council at the commencement of their proceedings based their engagements upon the result of a three years' trial. The special guarantee of the first moiety of the salaries of the Editors and Reporters in aid of the Subscription List was for three years. This guarantee, which was suggested by the Vice-Chairman, Mr. Daniel, out of abundant caution, has never been called into operation, and is now at an end; the first moiety of the salaries for this the third year having been provided for out of the subscriptions for the year. The contract with Messrs. Clowes for printing and distribution was also for three years certain and expires this year. By one of the terms of it, they are entitled to the option of continuing the contract for a further period of four years, the terms to be reconsidered; and they have already, by a letter dated the 17th of July instant, applied under such option to continue the contract for

that period, subject to any minor modifications the Council may see fit to propose. This application, to which the Council have acceded, shews the confidence entertained by Messrs. Clowes in the future of "The Law Reports." The three years' experience which the Council have now had of the income which "The Law Reports" has yielded, seems to them to justify the conclusion that these Reports, if properly conducted, will yield a permanent income of at least £21,000 per annum; and that such income will probably increase, if the principle of the Bar Scheme be adhered to, and independent professional control be maintained as the mainspring of management. Although the Council regard the continuance of the large professional support they have hitherto received as evidence that "The Law Reports," as hitherto published, are on the whole satisfactory, they are by no means insensible to the fact that they are still capable of improvement; and profiting by the three years of experience, the Council will direct close attention to the future efficiency of the Reports, without, as they hope, in any way diminishing the responsibility of the Editors and Reporters, or unduly trenching upon their proper functions.

EXPENDITURE.—The accounts shew the expenditure for the two years 1866, 1867, under the three heads of *Management*, *Printers' charges*, and *Salaries*.

Management.—The charges under this head date from the 1st of February, 1865, when the Council first came into existence by the appointment, in pursuance of the Bar Scheme, of members by Lincoln's Inn, the Inner Temple, the Middle Temple, and the Incorporated Law Society. These charges are exclusive of the salary of the Secretary, which is included in the item for salaries.

Printers' Charges.—These charges consist of the accounts of Messrs. Clowes for printing, publishing, and distributing "The Reports," "Weekly Notes," and "Statutes," to prepaying subscribers. The distribution involves free delivery within the limits of the Inland and Ocean British postage. For delivery beyond those limits, a sum for extra postage is charged to subscribers by Messrs. Clowes. The Council employ an independent printer as auditor to examine Messrs. Clowes' accounts, and see that the details are correct and the charges in conformity with their contract; these accounts are made out and audited quarterly, and when audited, are paid. The accounts have been made out, audited, and paid up to the 30th of June last, and Messrs. Clowes have about £600 in hand towards the expenses of the current quarter. The printing charges for 1867 exceeded those of 1866 by the sum of £344 7s. 11d.; this excess was owing chiefly to the increased size of the volume of Statutes for 1867. Upon the two quarters of the present year, ending the 30th of June, a saving of about £1000 has been effected, and a saving of about equal amount is

expected to be made in the two next quarters; making an expected saving upon the printer's charges for 1868, of about £2000.

Salaries.—The Council, in accordance with the Bar Scheme, guarantee the Editors and Reporters one moiety of their maximum salaries. This moiety is the first charge upon the subscriptions received in each year. Hitherto, including the present year, the Council have provided for this charge by investing and retaining a sufficient sum to meet it. Although guaranteeing only one moiety, the Council always have been and still are very desirous that the maximum salaries should be paid; but the second moiety is payable out of the subscriptions only, and not until after the costs of management and printers' charges have been paid. During the first year, Messrs. Clowes consented to the maximum salaries being paid in full, without insisting upon their priority as respected the second moiety. The amount of subscriptions received, together with the stock in hand, reckoned at subscription prices, are more than sufficient for that purpose. The salaries thus paid in 1866, amounted to £11,667 10s. This payment, added to the printers' charges, exceeded the amount received for subscriptions by the sum of £5002 17s. 1d., but was less than that amount added to the subscription price of the stock in hand by upwards of £1000.

The prepaid subscriptions for 1866 (£20,344 18s.), were more than sufficient to pay the guaranteed salaries (£5833 15s.), the printers' charges (£13,670 5s. 1d.), and the cost of management (£254 14s. 3d.), (together £19,758 14s. 4d.), by the sum of £576 3s. 8d. In the year 1867, the Editors and Reporters received their guaranteed moiety, and and one-fourth part of the second moiety; that is, five-eighths of the maximum salary. The sums thus paid for salaries in 1867 amounted to £7417 10s., and this sum, added to the printers' charges for 1867, (£14,014 13s.), and the cost of management (£254 14s. 3d.) (together £21,686 17s. 3d.), was less than the amount received for prepaid subscriptions in 1867 by the sum of £173 19s. 1d. These figures demonstrate that in each of the years 1866 and 1867 the amount actually received for the prepaid subscriptions has been more than sufficient to pay the guaranteed salaries, the cost of management, and the whole of the printers' charges. These are the only charges which it is the interest of the subscribers to know and be assured the Council have funds to meet. All beyond, up to the payment of the maximum salaries in full, is a mere question of prospective advantage to the Editors and Reporters—an advantage which the Council although not in any way bound, are undoubtedly anxious to obtain for them.

The Editors and Reporters have, in accordance with the provisions of the Bar Scheme, appointed two of their own body to investigate the accounts of the Council. This investigation has but recently been concluded. The accounts have been ascertained to be correct; and the auditors have made certain suggestions, having for their object

the diminution of future expense, and the increase of future subscriptions. From the explanations already given it will be seen that the present excess of payments to the Editors and Reporters is not a balance of liabilities over receipts, but is due to the liberality of Messrs. Clowes in waiving the priority to which they were entitled. The surplus stock now in hand, estimated at *half the subscription price*, is, however, more than sufficient by £996 14s. 11d. to meet this excess. The surplus stock is gradually being subscribed for at the full subscription price, and, though the process may be slow, the result is reasonably certain; but whether the excess be ever made good or not, or whether the surplus stock be ever subscribed for or not, neither the future operations of the Council, nor the future prospects of the Law Reports, or of the subscribers in respect of them, can be prejudiced. The subscriptions during the past three years have been more than sufficient to answer all those requirements which are essential to the supply of the Reports to the subscribers; namely, payment of the guaranteed salaries, the costs of management, and the charges for printing and distribution; and the Council rely with confidence upon the subscriptions for future years being in like manner sufficient for the same requirements.

It would be contrary to experience if the fact were otherwise. The Council make no bad debts; they have no interest on capital to provide for; they have no rent or taxes to pay for houses, or chambers, or offices; they are not burdened with salaries, or commission, or expenses of travelling agents; they have no proprietors' profits to secure. The sum applicable to the second moiety of the maximum salaries represents the surplus of the gross receipts after payment of those charges which make up the necessary cost of production. The Council are satisfied with the present position and financial prospects of the undertaking.

CHANGES IN THE COUNCIL.

Sir G. M. Giffard, upon receiving his appointment as Vice-Chancellor in March last, sent in his resignation. The vacancy has been filled up by the appointment by the Inner Temple of Mr. Henry Warwick Cole, Q.C., who has taken his seat. The vacancies which have been occasioned among the *ex-officio* members of the Council by the elevation to the Bench of Sir C. J. Selwyn and Sir Robert Phillimore, have been supplied by the accession of the present Solicitor-General, Sir W. B. Brett, and the Queen's Advocate, Sir Travers Twiss.

THE STATUTES AND DIGEST.

The publication of the Statutes was no part of the Bar Scheme, nor of the original object of the Council, but was adopted at the request of

subscribers. This publication has been attended with an expense which is considered by many subscribers to be greater than the advantages secured by it. From a return laid before Parliament on the 15th of May last, it appears that, in consequence of a suggestion made by Sir J. G. Shaw Lefevre to Mr. Secretary Hardy, the question of separating the public local Acts from the public laws of the whole country is likely to be taken into consideration by the Home Secretary. The Council therefore think it desirable to keep open the question whether some alteration should not be made next year with reference to the Statutes. The Council have been for some time very anxious that subscribers from the commencement should be supplied gratis with a Digest of the Cases reported, and some progress has been made towards the preparation of such a Digest; but the question of expense could not be overlooked. There seems ground for hoping that a Digest of the Cases for the three previous years may be delivered with the January, or, at latest, the February part for 1869; and the Council will direct their attention to this object, in the hope of being able to accomplish it.

AMERICAN AND COLONIAL SUBSCRIPTIONS.

The Council have ascertained that a large demand exists in America for "The Law Reports," but that the full advantages of this demand cannot be secured so long as British copyright is not protected in America by a convention between the two countries. The Equity and Common Law Series of the Law Reports continue to be reprinted at Philadelphia in parts, as imported from this country; the English edition will be continued to be supplied to the public libraries throughout the States, and leading members of the American Bar, under arrangements made by Messrs. Clowes, with the sanction of the Council. The Council also feel themselves justified in looking forward to considerably increased subscriptions in India and the Colonies, especially Australia.

In conclusion, the Council desire to congratulate their professional brethren in Ireland upon the success which has attended the establishment in that country of the Irish Law Reports, and to notice the advantages which, by adopting the principle of the English Bar Scheme, have been secured to all parties in Ireland by the fusion of existing interests and the extinguishment of unnecessary rivalry—a result which has been accomplished without sacrificing any of the real benefits of independent reporting.

By Order,

(Signed) ROUNDELL PALMER,

Chairman.

BENCHERS' READING ROOM, LINCOLN'S INN,
July 30th, 1868.

FINANCIAL STATEMENT.

| Dr. | | | | Cr. | | | |
|---|---------|----|----|---|---------|----|----|
| DECEMBER 31st, 1867. | | | | | | | |
| To Cost of Printing and Delivery of Reports :— | £ | s. | d. | By Subscriptions received :— | £ | s. | d. |
| 1866 Series | 13,670 | 5 | 1 | 31st of December, 1866 | 20,334 | 18 | 0 |
| 1867 Ditto | 14,014 | 13 | 0 | 31st of December, 1867 | 21,860 | 16 | 4 |
| Salaries :— | | | | " Amount due from Indian, American, and Colonial Agents on 31st of December, 1867 . . . | 1,333 | 19 | 0 |
| 1866 (paid in full) | 11,667 | 10 | 0 | Less Cost of Delivery . . . | 78 | 13 | 11 |
| 1867 | 7,417 | 10 | 0 | | | | |
| Sundries :— | | | | | 1,255 | 5 | 1 |
| Being Expenses of Management (exclusive of Secretary's Salary), from the 1st of February, 1865, to the 31st of December, 1867 | 509 | 8 | 6 | " Interest | 503 | 16 | 7 |
| | | | | " Balance | 3,324 | 10 | 7 |
| | £47,279 | 6 | 7 | | £47,279 | 6 | 7 |
| " Balance | 3,324 | 10 | 7 | " Value of Stock in hand, estimated at half Subscription Price | 4,321 | 5 | 6 |
| " Ditto | 996 | 14 | 11 | | £4,321 | 5 | 6 |
| | £4,321 | 5 | 6 | " Balance | £996 | 14 | 11 |
| To Liability :— | | | | | | | |
| To Inns of Court and Incorporated Law Society for amount received from them | £571 | 8 | 0 | By Amount received from Inns of Court and Incorporated Law Society . . | £571 | 8 | 0 |

J. WAGSTAFF BLUNDELL, Accountant, 49 Chancery Lane, W.C.

It should be here stated that prior to the incorporation of the Council in August, 1870, the Inns of Court and the Incorporated Law Society, in consequence of a suggestion made by Sir Roundell Palmer, consented to forego the repayment of the sums severally advanced by them, and to treat them as advances made in furtherance of a public object, and therefore as gifts—thus enabling the Council of Law Reporting to transfer their assets to the Incorporated Council free from any liability in the shape of debt for moneys advanced.

My duties as County Court Judge being (as I considered) paramount to any duty I owed to the Council as Vice-Chairman, I was not able to attend the meetings until the 15th of April, 1869. I then took the chair as Vice-Chairman (Sir Roundell Palmer not being present). One of the subjects for consideration was the preparation of the Annual Report for 1868. And, instead of being requested, as Vice-Chairman, to prepare the Report, as I had hitherto done, it was resolved that the preparation of the Report be referred to the Committee of Supervision, who undertook to do so, and thereby I was kindly relieved of the labour. At a meeting of the Council, held on the 1st of May, 1869, the Annual Report for 1868, as prepared by the Committee of Supervision, was presented, Sir Roundell Palmer was in the chair, but I was absent. The Report having been considered and some amendments made, it was resolved that the following Report prepared by the Committee of Supervision and amended at this meeting be adopted, and that the same be printed and circulated among the Profession, and the following is a copy:—

COUNCIL OF LAW REPORTING.

Members of the Council.

Chairman—SIR ROUNDELL PALMER, KNT., M.P., Q.C.

Vice-Chairman—W. T. S. DANIEL, ESQ., Q.C.

Ex-Officio Members.

THE ATTORNEY-GENERAL, SIR R. P. COLLIER, KNT., M.P.

THE SOLICITOR-GENERAL, SIR J. D. COLERIDGE, KNT., M.P.

THE QUEEN'S ADVOCATE-GENERAL, SIR TRAVERS TWISS, KNT.

Elected Members.

| | | |
|--|---|---------------------------|
| MR. SERJEANT O'BRIEN | } | Serjeants' Inn. |
| MR. SERJEANT PULLING | | |
| SIR ROUNDELL PALMER, KNT., M.P., Q.C. | } | Lincoln's Inn. |
| W. T. S. DANIEL, Esq., Q.C. | | |
| WILLIAM FORSYTH, Esq., Q.C. | } | Inner Temple. |
| H. WARWICK COLE, Esq., Q.C. | | |
| T. W. GREENE, Esq., Q.C. | } | Middle Temple. |
| JOHN GRAY, Esq., Q.C. | | |
| J. A. RUSSELL, Esq., Q.C. | } | Gray's Inn. |
| JAMES BARSTOW, Esq. | | |
| WILLIAM WILLIAMS, Esq. (Firm—Messrs. Currie & Williams), Lincoln's Inn Fields. | } | Incorporated Law Society. |
| W. S. COOKSON, Esq. (Firm—Cookson, Wainwright & Co.), 6 New Square, Lincoln's Inn. | | |

Secretary—JAMES THOMAS HOPWOOD, Esq., 3 New Square,
Lincoln's Inn.

ANNUAL REPORT FOR 1868.

In pursuance of the Bar Scheme the Council submit to the Profession a Report of the working of the system of Reporting under their control during the past year, together with a financial statement. It will be seen by the latter that the receipts for subscriptions during the year 1868 amounted to the sum of £22,067 10s. 6d. The receipts during the year 1867 were £21,860 16s. 4d., thus shewing an increase in 1868 over 1867 of £206 14s. 2d. In reference to the expenditure, the Council are glad to observe that some economical arrangements lately made have already proved beneficial; thus, the cost of the printing and delivery of the "The Law Reports" has been less by £1087 3s. 6d. in 1868 than it was in the year 1867, and the debit cash balance has been reduced from £3324 10s. 7d. to £292 8s. 2d. The Council, with a view to economy, have also directed certain changes to be made, which came into operation in the early part of this year, and a considerable saving of expenditure will, it is hoped, be thereby effected without impairing the efficiency of "The Law Reports."

The yearly income, as stated in the former Report, is more than sufficient to answer all necessary requirements, including the payment in 1868 of £5346 5s. to the staff of Editors and Reporters, and, although the surplus receipts have not been sufficient to pay them

the maximum salaries it is hoped that the time is not far distant when the state of the subscriptions will enable the Council to do so; but it rests mainly with the Profession by increased subscriptions to enable the Council to accomplish this object.

The accounts for the year 1868 have been duly audited by auditors appointed by the Editors and Reporters.

Two separate Digests of the Equity and Common Law cases included in "The Law Reports" from the time of their commencement were in a forward state of preparation in the early part of this year, when the Council came to the determination that there should be one Digest only, which should embrace all the cases. This consolidation of the two Digests into one has unavoidably caused a delay in the publication, which the Council regret; but the Digest will be delivered to the Subscribers for 1869 as soon as practicable.

The Council offer their thanks to the Lord Chancellor and the Law Lords, to the Members of the Judicial Committee of the Privy Council, and to Her Majesty's Judges at Law and in Equity for the assistance they have kindly afforded to the Editors and Reporters by giving them access to their written judgments and in revising the proof sheets.

They also express their thanks to the Bar and Solicitors for the facilities given by them to the Reporting Staff in the discharge of their duties by the loan of briefs and papers.

"The Law Reports" have now been in existence more than three years, and experience has proved that the Bar Scheme has, upon the whole, worked satisfactorily, although further improvements still remain to be effected in Law Reporting which the Council desire to see accomplished.

The Council observe with satisfaction the establishment of kindred institutions in other countries founded upon the scheme of "The Law Reports," and they regard the same as unequivocal manifestations of the soundness of the principles on which that Scheme was founded, namely, *independent professional control and the exclusion of all proprietary profit*. The Legal Profession in Ireland was the first to follow the example, and with signal success; more recently a similar system has been established in Bengal, and it is now proposed to introduce the same system into the United States, where, in the language of one of its supporters, the expediency of applying the new system is of even greater urgency than in this country.

Besides the changes which have taken place in the *ex-officio* Members of the Council, the Hon. Mr. Justice Hayes has resigned his seat in consequence of having been appointed one of Her Majesty's Judges, and the Council have with regret thereby lost a member who has always shewn a very sincere and active interest in their

proceedings. His place at the Council has been supplied by Mr. Serjeant O'Brien.

Under the Bar Scheme it is provided that one of the Members of the Council appointed by the Inns of Court and Incorporated Law Society respectively, should retire at the end of every two years, but that all members so retiring should be eligible for re-appointment. The period contemplated by the Scheme having expired in the month of February last, a communication was made to the different legal societies calling attention to the matter, but the several gentlemen who retired have all, with their consent, been re-appointed, with the exception of Mr. Lewin Taverner, who having expressed a wish to withdraw on the ground of ill-health, the Honourable Society of Gray's Inn has appointed Mr. J. A. Russell, Q.C., in his place.

By Order,

(Signed) ROUNDELL PALMER,
Chairman.

BENCHERS' READING ROOM,
April 30th, 1869.

My duties as County Court Judge having increased, and continuing rapidly to increase, especially after the Bankruptcy Act, 1869, had come into operation on the 1st of January, 1870, and as my services in the Council of Law Reporting were no longer required, I availed myself of an opportunity between the end of my May Courts and the commencement of my June Courts, to attend a meeting of the Council on the 2nd of June, 1870. I presided at that meeting as Vice-Chairman until Sir Roundell Palmer came, when I vacated, and he then took the chair, and I tendered my resignation, which was accepted, and I thenceforth ceased to take any part in the management of the affairs of the Council, and I was well content to leave the future interests of the Bar Scheme in the able and zealous hands of the other Members of the Council, who, by the adoption of the Report for 1868, prepared by the Committee of Supervision, had recognised and acknowledged the soundness of the principles and mode of procedure advocated by me in my first letter to Sir Roundell Palmer, and which, modified and improved, were embodied in the Bar Scheme—the preparation of Reports under professional control and the exclusion of all proprietary profits. Thenceforth I could only watch the labours of the Council as shewn in their Annual Reports and Financial Statements of Account; and this I

did with increasing pleasure, which culminated in the Report and Financial Statement for 1883, which was sent to me, as the others had been, officially as Judge of the County Court of Bradford.

The following are copies of that account and statement :—

THE INCORPORATED COUNCIL OF LAW REPORTING FOR ENGLAND AND WALES.

Members of the Council.

Chairman—JOSEPH BROWN, Esq., Q.C.

Ex-Officio Members.

THE ATTORNEY-GENERAL, SIR HENRY JAMES, KNT., M.P.

THE SOLICITOR-GENERAL, SIR FARRER HERSCHELL, KNT., M.P.

Elected Members.

| | | |
|--------------------------|---|-----------------|
| MR. SERJEANT SIMON, M.P. | } | Serjeants' Inn. |
| MR. SERJEANT PULLING | | |

| | | |
|--------------------------------|---|----------------|
| W. B. GLASSE, Esq., Q.C. | } | Lincoln's Inn. |
| HORACE DAVEY, Esq., Q.C., M.P. | | |

| | | |
|-----------------------------|---|---------------|
| SIR J. B. MAULE, KNT., Q.C. | } | Inner Temple. |
| ARTHUR CHARLES, Esq., Q.C. | | |

| | | |
|--------------------------|---|----------------|
| JOSEPH BROWN, Esq., Q.C. | } | Middle Temple. |
| ALFRED WILLS, Esq., Q.C. | | |

| | | |
|---------------------------|---|-------------|
| J. A. RUSSELL, Esq., Q.C. | } | Gray's Inn. |
| W. C. FOOKS, Esq., Q.C. | | |

| | | |
|--|---|------------------------------|
| WILLIAM WILLIAMS, Esq. (Firm—Messrs. Currie, Williams, & Williams), Lincoln's Inn Fields. | } | Incorporated Law Society. |
| JOHN HOLLAMS, Esq. (Firm—Messrs. Hollams, Son, & Coward), Mincing Lane, E.C. | | |

Secretary—JAMES THOMAS HOPWOOD, Esq., 10 Old Square,
Lincoln's Inn.

ANNUAL REPORT FOR 1883.

The following Report and financial statement are submitted by the Council to their Subscribers and to the Profession with much satisfaction, as they will be found to shew a more prosperous state of "The Law Reports" than has ever before existed, and a brighter prospect of success in the future. The Council feel much gratified with this result of their labours on behalf of the Profession to which they belong.

The subscriptions for the year 1883 amounted to the sum of £25,752 16s. 2d., being an increase upon the preceding year of £428 12s. 5d., and the sum of £2320 2s. was also received for Law Reports, Consolidated Digest, and other publications published prior to the year 1883. The advertisements produced £41 15s. 2d., and the interest from money on deposit and investments was £1133 6s. 4d., making up the total receipts during the year to the sum of £29,247 19s. 8d.

The cost of printing and delivery of the Law Reports and Statutes amounted to the sum of £10,714 17s. 5d., and the office expenses to £175 8s. 5d. The amount paid for salaries, including a bonus to the several gentlemen engaged on the staff, was £11,902 13s. 6d., making a total expenditure of £22,792 19s. 4d. Thus the receipts of the year exceeded the expenditure by £6455 0s. 4d.

As stated in the last Annual Report, the Council were of opinion that it was advisable to increase the reserved fund to £20,000, and accordingly the sum of £5000 has since been added to the sum of £15,000, at which that fund formerly stood. The revenue balance carried over from 1882 amounted to the sum of £9743 14s. 5d., and, after making the addition of the sum of £5000 to the reserved fund, it will be seen that the balance of revenue to the credit of the Council at the close of the year amounted to the sum of £11,198 14s. 9d., without including the sum of £4355 2s. 3d., the value of the stock of books at cost price. This large balance has enabled the Council to provide the following new books, which they expect will be found of great utility to the Profession.

The Council, in pursuance of an arrangement with the Treasury, have purchased of the Treasury a sufficient number of copies of the Chronological Table and Index to the Statutes issued by the Government during the current year, which is a great enlargement and improvement of the previous editions, and have distributed them gratis amongst the Subscribers to the entire series of "The Law Reports" for 1884.

A Triennial Digest of "The Law Reports" extending over the years 1881, 1882, and 1883, has been prepared for the Council by the

same able Editors who compiled the Consolidated Digest published by the Council in the year 1882, and to which it forms a supplement. This is now in course of distribution, free of charge, amongst the Subscribers to the entire series of "The Law Reports" for 1884, who will then possess complete Digests of all the Reports issued by the Council to the end of 1883.

The Council have now in preparation another work, referred to in their last Report, viz., an Index to the London Gazettes of the last fifty-four years, that is to say, to the matters of permanent and practical importance contained therein, embracing such subjects as Orders in Council, Orders of the Local Government Board, and other Orders having the force of Statutes, International Treaties, &c. The labour that has been bestowed upon its preparation by Mr. Alex. Pulling, the editor, has been immense, for the work has grown considerably beyond the original idea, and will have much value not only as a Digest, but also as an Index of the subject-matters. It has, of necessity, occupied much time in preparation, and will take some further time yet to secure a full and accurate examination, but the MS. will shortly be in the hands of the printers, and it is hoped that the book may be completed for distribution in October next. As this work will not be required by all their Subscribers, the Council thought it best to limit the distribution to those Subscribers who chose to pay for it, but to fix the price at a sum very much below its actual cost, and they have no hesitation in commending the work to their notice, and in inviting those who have not already subscribed to lose no time in becoming Subscribers, as the number of copies printed will be limited.

The extraordinary expenses thus incurred in the present year for the Index to the Statutes, the Triennial Digest, and the Index to the London Gazettes, besides a further outlay of £1400 for re-printing a limited number of the Reports of the year 1876, the stock of which is nearly exhausted, and besides a liberal bonus to the staff, will all be more than covered by the large balance standing to the credit of the Council at the close of the year 1883, without touching the reserved fund.

As the Council are now in receipt of a large surplus revenue, and do not anticipate any extra demand on their funds for three years to come, they have given much consideration to the best mode of employing a further portion of the surplus revenue for the benefit of the Profession, and have come to the conclusion that the one which would be most generally appreciated and approved, would be to lower the subscription at the end of the current year from £5 5s. to £4 4s. The Council have satisfied themselves that may safely do this; for, independently of the reserve fund of £20,000, it is calculated that,

assuming the Council retain their present number of Subscribers only, without any addition thereto, the funds would still be sufficient to pay the charges of the year, including a liberal bonus to the staff, and leave a balance for contingencies. The Council have accordingly given the necessary directions for the proposed reduction of the subscriptions to "The Law Reports" for the ensuing year, 1885; and they desire that Subscribers at home and abroad, in making their remittances in November next, will notice the reduction in the amount of the subscription. It is not proposed to lower the price of the current year or the back years of "The Law Reports," and the Indian Appeals will also continue at the present rate of £1 1s. per copy.

It is with great satisfaction that the Council regard the success of "The Law Reports" in the past, a success that has enabled them from time to time not only to present their Subscribers with numerous valuable publications, but also now to reduce the future subscriptions.

The accounts have been duly audited and approved.

The Council desire again to record their thanks to Her Majesty's Judges and to the Profession in its different branches, for the kind assistance which they so readily afford to the gentlemen engaged in the work of reporting.

In conclusion, the Council desire to acknowledge the support hitherto received from the Subscribers to "The Law Reports," and venture to ask not only for a continuance of that support, but their assistance in obtaining the co-operation of other members of the Profession, in order to increase the subscription list, and thereby meet any diminution of income which will arise by the proposed reduction of the subscriptions in the ensuing year.

By Order,

(Signed) JOSEPH BROWN,
Chairman.

COUNCIL ROOM, LINCOLN'S INN HALL,
May 27th, 1884.

FINANCIAL STATEMENT.

YEAR ENDING 31ST DECEMBER, 1883.

REVENUE ACCOUNT.

| £ | s. | d. | £ | s. | d. |
|---|--------|----|---------|----|----|
| To Cost of Printing and Delivery of Reports, Statutes and Index | 10,714 | 17 | 9,743 | 14 | 5 |
| " Salaries, including Bonus | 11,902 | 13 | | | |
| " Office Expenses | 175 | 8 | | | |
| " Reserve Fund | | | 28,072 | 18 | 2 |
| " Balance carried down | | | 41 | 15 | 2 |
| | | | 1,133 | 6 | 4 |
| | | | £38,991 | 14 | 1 |
| By Balance brought forward | | | | | |
| " Subscriptions received up to 31st December, 1883 :— | | | | | |
| " For 1883 Reports £25,752 16 2 | | | | | |
| " " Reports prior to 1883, Consolidated, Digest, and Index to Statutes | | | | | |
| " Advertisements | | | | | |
| " Interest received on Investments, and on Deposit Account | | | | | |
| | | | 11,198 | 14 | 9 |
| | | | 4,355 | 2 | 3 |
| | | | £15,553 | 17 | 0 |
| By Balance brought down | | | | | |
| " Stock undisposed of, valued at cost price, and becoming available when sold | | | | | |

I had the satisfaction of knowing that the vacancy on the Council occasioned by my resignation in June, 1870, was forthwith filled up by the appointment of Mr. Amphlett, as the representative of Lincoln's Inn, in my place. And also that the arrangement for a charter of incorporation, as also suggested in my letter to Sir Roundell Palmer, was agreed to and afterwards carried into complete effect.

Of course I have no knowledge of the details of the management by the Council after I had resigned, and it may be thought presumptuous in me to single out any one of the members as labouring more earnestly than others; but looking at the Report for 1883, I think the Profession must acknowledge how much of the present satisfactory condition of "The Law Reports" and their financial prosperity is owing to the energy and zeal of the Chairman, Joseph Brown, Esq., Q.C., who has for several years last past devoted himself to the management of the affairs of the Council; and it is to me very pleasing to observe that Mr. Serjeant Pulling has from his appointment in May, 1866, continued one of the Representative Members of Serjeants' Inn on the Council, and, as shewn by the Report of 1883, a very active and useful member. I am glad also to see that the valuable services of Mr. Alfred Wills, not only as a hard-working member of the Bar Committee, but for several years last past as the Representative of the Middle Temple on the Council jointly with his colleague, the Chairman, have not interfered with his interests as leader of the North-Eastern Circuit, and that his well-tryed professional abilities have at length met their reward by being recently raised to the Bench as a Judge of the Queen's Bench Division of the High Court of Justice.

And I must not omit to notice specially the services rendered by Mr. William Williams; who having, when Vice-Chairman of the Incorporated Law Society, been appointed one of the first Representative Members of that body upon the Council of Law Reporting, has been continued ever since, by repeated re-elections, and still is one of the most active Members of the Council, and the only remaining Member of the first Council appointed in January and February, 1865.

And last, and by no means least, must a hearty recognition be

made of the faithful, long-continued, and well-tried services of the Secretary, James Thomas Hopwood, Esq. It will not be forgotten that he, with exemplary zeal and disinterested devotion, rendered gratuitous services as one of the Honorary Secretaries of the Bar Committee from the commencement and throughout their six months' labour. And as Secretary of the Council of Law Reporting (to say nothing of his faithful stewardship of the hundreds of thousands of pounds which have been received and disbursed by him without error or omission) he has throughout his long career of office discharged its varied and delicate, and often difficult, duties, not only without giving offence, but to the entire satisfaction of all who came within the wide range of his influence. More might be said; but my personal thanks to Mr. Hopwood have been already expressed.

The reduction of the subscription from £5 5s. to £4 4s., as decided upon by the Report of 1883, is undoubtedly a step in the right direction; whether it might not have been taken earlier, to wit, as soon as it had been proved that the subscriptions were more than sufficient to meet all the requirements of the Council, may be the opinion of some who might not desire their subscriptions to be applied to the formation of a large reserve fund from which they might never profit. But whether there be room for two opinions upon this subject or not, the realisation of £20,000 now existing as a reserve fund, is a striking proof of the soundness of the principles upon which the Bar Scheme was founded, and affords an irrefutable answer to all those objectors who in the early stages of the promotion of the Scheme were ready to heap coals of fire upon the heads of those who, firm in the faith of ultimate success, resolutely withstood all opposition and turned a deaf ear to interested clamour, and refused to believe in prophecies of failure.

Before closing this record of pleasing memories, I wish to make plain the reason, as it appears to me, of the success which has attended the labours of the Council. It will be found, I believe, in the principle upon which the members are selected. They are selected by the operation of a self-acting procedure which secures the appointment of members in every instance well fitted to take part in the work of the Council. Thus the *ex-officio* members,

the Attorney-General, the Solicitor-General, and the Queen's Advocate (as long as that officer existed), represented the heads of the Profession for the time being—and the individual members were liable to change whenever either was raised to the Bench, or resignation resulted from a change of Government. During the nineteen years the Council has been in existence there have been several changes of Government; but in every instance of change the new officers have willingly accepted the appointment and rendered useful service as *ex-officio* members. Party politics have not in a single instance been visible either in the composition of the Council or the management of its affairs during the whole course of its existence. As regards the elected members, the bodies who elect are absolutely independent of each other. The Incorporated Law Society would not tolerate interference by any Inn of Court, nor would any one of the four Inns of Court tolerate interference by either of the other three, or by the Incorporated Law Society. If occasion should arise, there would probably be mutual conference, but no such occasion has yet arisen. The elected members, like the *ex-officio* members, are liable to change, either by resignation or, in the case of members of the Inns of Court, by being raised to the Bench, as has frequently happened. And all elected members are elected for two years only, but all are re-eligible; and in every instance (except in the case of Mr. Taverner, who retired from ill health), all have been from time to time re-elected. Thus the practical result of the procedure has been to secure continuity in the Council with a sufficient amount of change to prevent sectional predominance. And as to the character of the individuals selected, the Profession has seen that, without an exception, they have been not only worthy representatives of the bodies electing them but worthy representatives of the interests of the Legal Profession in the objects of the Council.

The Council, thus constituted, has been able from the first and throughout, to deal with that most difficult matter, the exercise of patronage, not only without complaint on the ground of favouritism, but with the conviction throughout the Profession that, bearing in mind the provisions of the Bar Scheme, considerations of merit have been made the sole ground of appointment,

and the most satisfactory proof of the soundness of the judgment exercised in these appointments is to be found in the subsequent professional careers of the individuals appointed. These facts are patent to the Profession, and more need not be said.

The Council is also by its constitution admirably qualified to judge and, when necessary, exercise control over the Editors and Reporters. For the Council consists for the most part of leaders in actual practice who require the Reports for daily use—none could be found better able to point out defects and provide for their removal, to say nothing of the readiness with which they would hear and attend to any reasonable complaint by their professional brethren, or from solicitors, as clients. And being leaders of the Profession the Judges would be ready to point out any defects or errors that might come under their observation. As for the competency of the Council to deal with Finance, not a word need be said. Look at the Reserve Fund of £20,000—*Res ipsa loquitur!*

It may be matter of regret with many that the successful establishment of "The Law Reports" has not had the effect of relieving the Profession from what is thought to be the incubus of so many contemporaneous Reports. But if the existence of so many Reports be an evil (which some doubt), the Profession have the remedy in their own hands, and therefore have no right to complain. There can be no doubt that as the Council set the example of publishing "Weekly Notes," the public have so far benefited by competition; that example has been followed by "The Law Journal," and not only followed, but improved upon, by "The Law Times" and "The Solicitors' Journal," and, as I know from experience, the fuller weekly notes of cases in those publications have been of great use in County Courts. Whether "The Weekly Notes" published by the Council could be made more useful for their country subscribers is a matter which may be worth consideration (1).

As to the future of "The Law Reports," prophecy would be useless, this only need be said, the condition of their existence is that they meet the wants of those who require them. And if

(1) Since the above has been in type another competitor has appeared, "The Times Law Reports," published weekly.

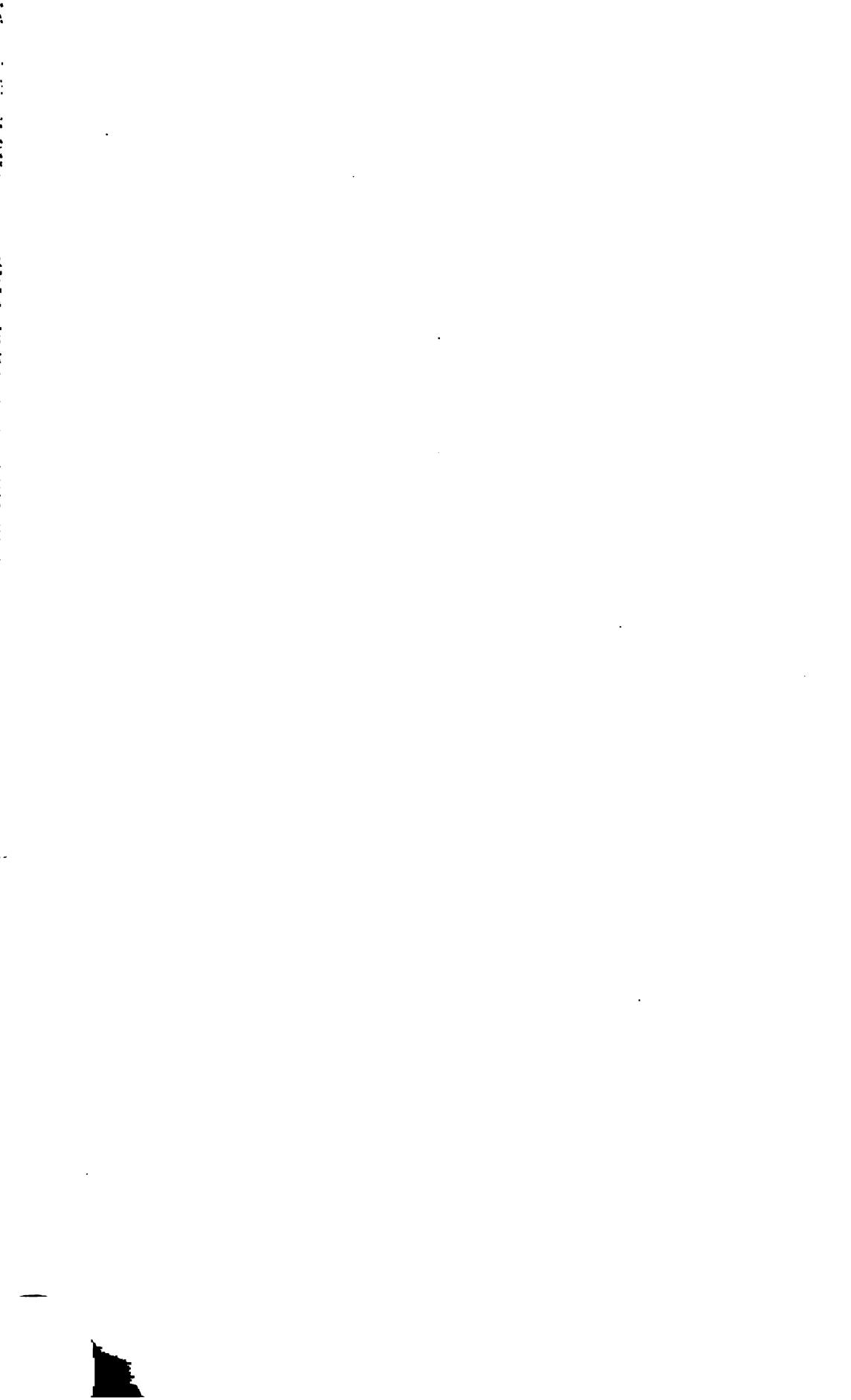
this condition be complied with in the future as fully as it has been in the past, there need be no apprehension of an insufficient subscription at the reduced sum ; because, bearing in mind the fact ascertained by me at the outset, that in 1830 there were 5643 copies of the 10th vol. of Barnewall and Cresswell actually sold, the demand for such a set of standard Reports as "The Law Reports," has proved itself to be has not yet been reached. I hope, therefore, that "The Law Reports," adhering to the principles on which they were established, will go on and prove a reliable repertory of those decisions, and those decisions only, which come within one or other of the four classes enumerated in Lord Justice Lindley's valuable paper, appended to my first letter to Sir Roundell Palmer. If upon any occasion any Court or any Judge requires a report of a case which does not come within that classification, let such a report be found elsewhere than in "The Law Reports."

Although infirm health and the physical weaknesses of age have compelled me to retire from active service in the Profession, I feel an abiding interest in a Scheme with which I have been associated with my professional brethren for so many years ; and if I have contributed anything towards the maturing of that Scheme which is considered worthy of remembrance, I hope I may be allowed to offer it as the only instalment I can now offer of that debt which Lord Bacon has said, "Every lawyer owes to his profession."

I have had the ambition to hope that by example, fortified by experience, I might have been able to pay that debt, if not in full at least to a larger extent—by securing for the public the advantages of a well-considered scheme for the *Local Administration of Justice* in Courts having jurisdiction in all civil matters co-extensive with the High Court—but I have been disappointed, though not cast down, as I feel encouraged by the promise that "Bread cast upon the waters shall be found after many days"—

"Liberavi animam meam !"

FINIS.



APPENDIX I.

The names of the twenty-two members who formed the COMMITTEE appointed by the MEETING OF THE BAR held in Lincoln's Inn Hall on the 2nd of December, 1863, under the presidency of Sir ROUNDELL PALMER, Attorney-General,

and

Their subsequent Professional Career.

- | | |
|--|---|
| Sir ROBERT P. COLLIER, Knt., M.P., Solicitor-General. | Attorney-General; Judge of the Common Pleas, and Salaried Member of the Judicial Com- mittee of the Privy Council. (Living.) |
| Sir ROBERT PHILLIMORE, Queen's Advocate. | Judge of the Court of Admiralty, and Dean of the Arches Court. (Retired—living.) |
| Sir FITZROY KELLY, Knt., M.P., Q.C. | Lord Chief Baron of the Court of Exchequer. The last of his order. (Dead.) |
| MONTAGUE E. SMITH, Esq., M.P., Q.C. | Judge of the Common Pleas, at Westminster; Salaried Mem- ber of the Judicial Committee of the Privy Council. (Retired —living.) |
| C. J. SELWYN, Esq., M.P., Q.C. | Solicitor-General; Lord Justice of Appeal in Chancery. (Dead.) |
| Sir HUGH M. CAIRNS, Knt., M.P. Q.C., | Attorney-General; Lord Justice of the Court of Chancery; Lord Chancellor, Earl Cairns. (Living.) |
| RICHARD PAUL AMPHLETT, Q.C., M.P. | Baron of the Exchequer; Lord Justice of Appeal. (Dead.) |
| THE HON. GEO. DENMAN, Q.C., M.P. | Judge of Common Pleas at Westminster, now Judge of the Queen's Bench Division of the High Court of Justice. (Living.) |
| GEO. MELLISH, Esq., Q.C. | Lord Justice of the High Court of Chancery. (Dead.) |

| | |
|-------------------------------|--|
| NATHANIEL LINDLEY, Esq., Q.C. | Judge of the Common Pleas ; Lord Justice of Appeal. (Living.) |
| J. R. QUAIN, Esq., Q.C. | Judge of the Queen's Bench. (Dead.) |
| ALFRED WILLS, Esq., Q.C. | Judge of the Queen's Bench Division of the High Court of Justice. (Living.) |
| W. T. S. DANIEL, Esq., Q.C. | Judge of County Courts. (Retired—living.) |
| ALEXANDER PULLING, Esq. | Serjeant-at-Law. |
| JAMES DICKINSON, Esq., Q.C. | Became Leader of his Court, and retired from practice. (Living.) |
| JOSHUA WILLIAMS, Esq., Q.C. | Conveyancer, and the well known Author of several Standard Legal Works. (Dead.) |
| GEO. SWEET, Esq. | Conveyancer, well known as Editor of "Jarman and Bythe- wood's Precedents," with Notes. (Dead.) |
| GEO. DRUCE, Esq., Q.C. | Died suddenly when rising into well-merited distinction as a Leader of the Equity Bar. (Dead.) |
| HENRY MATTHEWS, Esq., Q.C. | Leader of the Oxford Circuit. (Living.) |
| G. W. HASTINGS, Esq., M.P. | Long connected with, and now President of, the Council of the Social Science Association ; connected with the Law Amendment Society, and now Chairman of the Worcester- shire Quarter Sessions. (Living.) |
| JOHN WESTLAKE, Esq., Q.C. | Of world-wide reputation as a writer on International Law. (Living.) |
| F. VAUGHAN HAWKINS, Esq. | Author of legal works of recog- nised value, and of established reputation as a Member of the Equity Bar. (Living.) |

APPENDIX II.

The following Tabular Statement shews the ACTUAL ATTENDANCES of the several MEMBERS OF THE COMMITTEE. In some cases the proceedings were communicated to members not present, and being approved their attendance became unnecessary.

There were twenty-four meetings.

| Names. | Attendances. | Names. | Attendances. |
|-----------------|--------------|----------------------|--------------|
| Amphlett . . . | 24 | Matthews . . . | 8 |
| Lindley . . . | 24 | Quain . . . | 6 |
| Daniel . . . | 23 | Denman . . . | 6 |
| Druce . . . | 23 | Montague Smith . . . | 4 |
| Dickinson . . . | 23 | Selwyn . . . | 4 |
| Pulling . . . | 17 | Hastings . . . | 4 |
| Westlake . . . | 17 | Cairns . . . | 2 |
| Sweet . . . | 17 | Mellish . . . | 2 |
| Hawkins . . . | 14 | Kelly . . . | 1 |
| Williams . . . | 12 | Collier . . . | 0 |
| Wills . . . | 11 | | |

APPENDIX III.

The following Statement contain the names of the several *ex-officio* Members of the Incorporated Council of Law Reporting who attained JUDICIAL DIGNITY :—

| | |
|-------------------------------------|---|
| The Right Hon. the EARL OF SELBORNE | Lord Chancellor. |
| The Right Hon. the EARL CAIRNS | Lord Chancellor. |
| Sir JOHN DUKE COLERIDGE | Now Lord Coleridge and Lord Chief Justice of England. |
| Sir ROBERT PORRETT COLLIER | Judicial Committee of the Privy Council. |
| Sir WILLIAM BOVILL | Lord Chief Justice of the Common Pleas. |
| Sir JOHN ROLT | Lord Justice of the Court of Chancery. |
| Sir CHARLES JASPER SELWYN | Lord Justice of the Court of Chancery. |
| Sir ROBERT PHILLIMORE | Judge of the Court of Admiralty and Privy Councillor. |
| Sir JOHN BURGESS KARSLAKE | Privy Councillor. |
| Sir RICHARD BAGGALLAY | Lord Justice of Appeal. |
| Sir GEORGE JESSEL | Lord Justice and Master of the Rolls. |
| Sir WILLIAM B. BRETT | Lord Justice and Master of the Rolls. |
| Sir JOHN HOLKER | Solicitor-General and Lord Justice of Appeal. |
| Sir WILLIAM V. HARCOURT | Privy Councillor and Home Secretary. |

APPENDIX IV.

The following Statement contains the names of those Members of the Council of Law Reporting, other than *ex-officio* members, who attained JUDICIAL DIGNITY :—

The Right Hon. the EARL OF SELBORNE.

The Right Hon. Sir FITZROY KELLY. Lord Chief Baron.

The Right Hon. Sir RICHARD PAUL AMPHLETT.

The Right Hon. Sir J. B. KARSLAKE.

The Hon. Sir GEORGE MARKHAM GIFFARD (afterwards the Right Hon. GEORGE MARKHAM GIFFARD, Lord Justice of Appeal).

The Hon. Sir GEORGE HAYES.

The Hon. Sir JAMES FITZJAMES STEPHEN.

The Hon. Sir EDWARD E. KAY.

The Hon. Sir JOHN PEARSON.

The Hon. Sir ALFRED WILLS.

His Honour J. A. RUSSELL, Esq., Q.C., County Court Judge.

| | |
|-----------------------------|---------------------------------------|
| W. T. S. DANIEL, Esq., Q.C. | } County Court Judges without status. |
| H. WARWICK COLE, Esq., Q.C. | |

APPENDIX V.

The following Statement contains the names of Barristers who have accepted Appointments from the Council of Law Reporting, and have since acquired JUDICIAL DIGNITY or PROFESSIONAL DISTINCTION :—

| | |
|------------------------------------|---|
| Sir LEWIS WILLIAM CAVE, Knt. | Now Judge of the Queen's Bench Division of the High Court, and having the special jurisdiction of the London Court of Bankruptcy. |
| ARTHUR WILSON, Esq. | Now a Judge in India. |
| The Hon. CHANDOS LEIGH | Q.C., Counsel to the Speaker of the House of Commons. |
| CHARLES CLARK, Esq. | Q.C. (Dead.) |
| J. F. MACQUEEN, Esq. | Q.C. (Dead.) |
| E. F. MOORE, Esq. | Q.C. (Dead.) |
| ARTHUR CHARLES, Esq. | Q.C., and now a member of the Council of Law Reporting. |
| G. W. HEMMING, Esq. | Q.C. |
| JAMES ANSTIE, Esq. | Q.C. |
| GAINSFORD BRUCE, Esq. | Q.C. |
| HENRY M. BOMPAS, Esq. | Q.C. |
| EDWARD WINGFIELD, Esq. | Under Secretary of State for the Colonies. |
| JAMES STIRLING, Esq. | Counsel to the Treasury. |
| E. A. C. SCHALCH, Esq. | Attorney-General for Jamaica. (Dead). |
| WILLIAM MACPHERSON, Esq. | Legal Adviser to the Secretary of State for India. |
| J. W. DE LONGUEVILLE GIFFARD, Esq. | } County Court Judges. (Now living.) |
| HENRY HOLROYD, Esq. | |
| R. HORTON SMITH, Esq. | Q.C. |
| W. D. GRIFFITH, Esq. | Attorney-General at the Cape; County Court Judge. (Living.) |

These appointments furnish evidence of the soundness of the judgment exercised by the Council in the selection of candidates for Reporterships, and I have ventured to prepare the statement with that view, and that only.

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